

1 you a letter making this request that you modify the
2 contract because the time sharing usage was above what had
3 been anticipated?

4 A. Yes, sir.

5 Q. All right. I take it this letter, Exhibit 30,
6 may or may not be such a request?

7 A. It may or may not. Depends on the attachments.

8 MR. KELLOGG: Mark this as 31, please.

9 (Deposition Exhibit 31 was marked for
10 identification.)

11 BY MR. KELLOGG:

12 Q. Take a look at that memo that is marked Exhibit
13 31.

14 (Witness examines document.)

15 BY MR. KELLOGG:

16 Q. Have you ever seen that before, sir?

17 A. Yes, sir.

18 Q. This Exhibit 31, does it appear to be a copy of
19 a memorandum from Jack Rugh to you, dated May 6, 1983?

20 A. Yes, sir.

21 Q. Does it appear to be Mr. Rugh's comments on the
22 request for contract modification that was made in Murray

Sparco

68021

1 Hannon's letter to you of April 8, identified here as
2 Exhibit 30?

3 A. Yes, sir.

4 Q. Mr. Rugh's comments are directed to the time
5 sharing cost issue, are they not?

6 A. Yes, sir.

7 Q. Turn to page 2 of the memorandum, Exhibit 31.
8 Down there indented in subparagraph 2, this is a part of Mr.
9 Rugh's analysis of his attempt to estimate INSLAW's actual
10 costs, I believe.

11 And in part 2 he mentions there, "INSLAW has
12 three people on their data center operations staff.
13 Assuming that one person is devoted full-time to time
14 sharing operations, (a considerable over estimate), the
15 operations cost should not exceed \$2,000 per month."

16 Do you see that there, sir?

17 A. I see it.

18 Q. Did it ever come to your attention at any point
19 after this, after May 6 of 1983, that that estimate that Mr.
20 Rugh was making, which was based on three people, three
21 employees of INSLAW working at the data center on this time
22 sharing, did it ever come to your attention that that

1 assumption was incorrect?

2 A. I don't know.

3 Q. You have no recollection of it ever coming to
4 your attention at any time after May 6 of 1983?

5 A. I don't remember right now. I'd like to read
6 the rest of this memorandum.

7 Q. Sure, go ahead.

8 Q. I am not talking about the (Pause.)

9 A. Okay, I have looked at it.

10 BY MR. KELLOGG:

11 Q. Well, my question to you is, and maybe you have
12 answered, I don't think you did, but in that subparagraph 2,
13 on page 2, as a part of Mr. Rugh's analysis of what he is
14 trying to estimate to be INSLAW's actual costs of operating
15 the computer and the time sharing, part of that, he mentions
16 that INSLAW has three people on their data center operating
17 staff, operations staff.

18 And he utilized that premise, that factual
19 premise, in calculating what he estimates the costs for that
20 part of the operation should be; isn't that right?

21 A. It appears to be a part of his technical
22 analysis.

Sparco

68021

1 Q. My question to you is simply, did it ever come
2 to your attention at any time after May 6, 1983, that in
3 fact INSLAW did not have only three people working on the
4 data center operations staff in connection with the time
5 sharing, but in fact, had a good deal more?

6 A. I think the number -- the answer is, I don't
7 know. But, I don't know, the number fluctuated.

8 Q. I am not talking about their being three, in
9 fact, when Mr. Rugh wrote his memo, and later INSLAW adding
10 or subtracting some people at a later time, that is not my
11 question.

12 My question to you is, do you have any
13 recollection of ever finding out that when Mr. Rugh wrote
14 this memo, his assumption that there were three people whose
15 time was attributable to this time sharing data center
16 operation, that that assumption was not correct and that
17 there were substantially more employees who were working on
18 this?

19 A. No.

20 Q. That never came to your attention?

21 A. No. I personally went out to the data center,
22 together with the cognizant auditor, and the official in

Sparco

68021

1 charge of negotiating provisional rates, including SRU's,
2 and saw only one person at the data center.

3 Q. Did it ever come to your attention that there
4 were other people at other locations working on the time
5 sharing matter, the time sharing computer, whose time was
6 being charged to this?

7 A. Yes.

8 Q. As a matter of fact, all told, there were
9 something like 17 people who were working on the time
10 sharing work; isn't that right?

11 A. That is -- are we still talking about paragraph
12 2?

13 Q. Well --

14 A. Which talks about the data center.

15 MR. KELLOGG: Strike that.

16 BY MR. KELLOGG:

17 Q. I recognize paragraph 2 talks about the data
18 center. But I think if you will read through the various
19 components of his calculation of an estimated cost of
20 running the time sharing operation, that's the only manpower
21 figure that he calculates in there.

22 A. It's a very complex and lengthy memorandum. I

1 would have to read it probably three or four times to be
2 able to discuss it with you.

3 Q. Well, sir, I am just asking you. You can take
4 as long as you want, and if you want to be here until
5 midnight we will do that.

6 MS. SPOONER: No, we won't.

7 BY MR. KELLOGG:

8 Q. I want you to tell me whether there is anything
9 in here that you see that you can point your finger to where
10 Mr. Rugh has calculated any manpower cost for the operation
11 of this time sharing center other than these three people in
12 that paragraph 2.

13 A. I am a nontechnical person, would have to
14 evaluate an expert's analysis. I sought his advice, not
15 vice versa. I could make an attempt at it, if you wish.
16 But it will be time consuming.

17 Q. There are six subparagraphs that I see in which
18 he describes the components of his analysis.

19 A. It's his advice to me.

20 Q. I understand.

21 A. I accepted it.

22 Q. I understand that, I am not questioning that

1 you accepted it. I am just asking you a question.

2 The first question is, is there anywhere in
3 this memo that you can point to that Mr. Rugh calculated any
4 manpower costs other than the three people at the data
5 center operations staff in subparagraph 2?

6 A. I will need two hours to analyze it.

7 Q. You can just go right ahead.

8 A. Beginning now, good.

9 MS. SPOONER: Mr. Kellogg, let me just say that
10 we are not going to be here until midnight. As far as I am
11 concerned this deposition is going to end at a reasonable
12 hour. If you want to continue it sometime next week, that
13 is what we will do.

14 I think what this witness is trying to tell
15 you, and he's said it clearly, is that he is not a technical
16 person and that it will take him some time to review this
17 memorandum.

18 If you wish him to take the time to do that
19 that is your prerogative and we will do it. But not at the
20 expense of going until midnight.

21 MR. KELLOGG: My comment of going until
22 midnight is not at my behest, but simply because I, at Mr.

1 Cooper's request, he insisted that however long it takes,
2 that we finish today. I am perfectly happy to carry it over
3 if need be.

4 MS. SPOONER: The question is do you want to
5 spend the time today for this witness to review this
6 memorandum given that he has told you he is not --

7 MR. LYONS: Let's go off the record.

8 MS. SPOONER: Excuse me, may I finish?

9 MR. LYONS: We are off the record, are we not?

10 THE REPORTER: No, we are not.

11 MR. LYONS: I apologize. Excuse me. Finish
12 your statement.

13 MS. SPOONER: This witness has indicated to you
14 that he is not a technical person and does not feel
15 qualified to review the memorandum for the purpose you have
16 asked.

17 He's explained to you it will take him some
18 time to do that. Obviously you are entitled to require him
19 to do that if you wish.

20 I just want to make sure that that is the way
21 you wish to spend this afternoon.

22 (Off-the-record discussion.)

1 BY MR. KELLOGG:

2 Q. Mr. Videnieks, let me ask this question. Maybe
3 we can shortcut this.

4 Did it ever come to your attention at any time
5 after May of 1983 that INSLAW had other employees at its
6 main office on 15 Street, not at the data center in Lanham,
7 who did work connected with the operation of the time
8 sharing center in Lanham, even though they didn't physically
9 work there, did that ever come to your attention?

10 A. We are on the record?

11 Q. Yes.

12 A. Yes, sir.

13 Q. When did it come to your attention, do you
14 recall?

15 A. I don't recall.

16 Q. Would it have been as long as a year after
17 this?

18 A. I don't recall.

19 Q. Would it have been two years after this?

20 A. I don't recall.

21 Q. Was it before the contract terminated that it
22 came to your attention, do you think?

Sparco

68021

1 A. Before the contract was terminated?

2 Q. No, before it ended that March of 1985, by its
3 own terms.

4 A. It may have.

5 Q. In any event you get this memorandum that is
6 marked Exhibit 31 from Mr. Rugh. What, if anything, do you
7 do based on Mr. Rugh's analysis that is contained here?

8 A. I am concerned about this notification of an
9 overrun, impending overrun.

10 Q. Excuse me, so I understand, when you say this
11 notification of a pending overrun, you are speaking about
12 Hannon's April 8 letter in which he says --

13 A. Yes, sir, not specifically Jack's memo.

14 Q. Right. So you are concerned about that. Rugh
15 gives you this comment about it, his technical input. What
16 do you --

17 A. I am more concerned now.

18 Q. What do you do as a result of getting this
19 memo?

20 A. I become concerned that we are being
21 overcharged, this contract, the contract in question is
22 being overcharged for computer center costs.

1 A. I don't recall any interim positions as such.
2 The executive office concurred with the suspension letter, I
3 think they actually concurred on a copy of the suspension
4 letter.

5 Q. Was that something that you drafted before you
6 had these further discussions with the executive office
7 people, or after?

8 A. I can't recall. The letter was drafted by an
9 organization which was known as administrative counsel, at
10 the time.

11 Q. Would this have been Mr. William Snider again
12 at this point?

13 A. No, sir.

14 Q. Who was the administrative counsel at that
15 time?

16 A. It was a lady attorney working for Mr. Snider.

17 Q. What was her name?

18 A. I believe her first name was Liz, and last name
19 may have been Nagy, N A G Y.

20 Q. I take it you had discussions with this lady
21 attorney, Ms. Nagy, if that was her name, about this
22 question, as well?

1 the language to use.

2 Q. What is your recollection as to when that
3 notification came?

4 A. Not good. My recollection is not good.

5 Q. Well, I know, but what is the best recollection
6 you have as to when that took place?

7 MS. SPOONER: You are asking this witness for
8 the date of the document?

9 MR. KELLOGG: I am asking him to give me his
10 best recollection as to the time period when this
11 notification of the suspension of payments came in relation
12 to the time the issue was first raised in April and May of
13 '83.

14 BY MR. KELLOGG:

15 Q. Are we talking about three months later, six
16 months later, a year later?

17 A. I think it would have been within three months.

18 Q. All right. Now, I take it the practice was
19 that INSLAW was submitting vouchers every month, pretty
20 much, weren't they?

21 A. I think we, at INSLAW's request, authorized
22 INSLAW to submit vouchers twice a month.

Sparco

68021

1 Q. All right, so twice a month. Assuming it took
2 two or three months or thereabouts between the time that
3 this issue arose and when your letter went out suspending
4 the payments, or suspending portions of the payment, were
5 you, or did you suspend portions of every succeeding payment
6 until the issue might be resolved at a later point, or did
7 you just suspend payment on specific invoices, vouchers that
8 had already been submitted at that point?

9 A. I don't understand your question.

10 Q. The recommendation that was contained in
11 Exhibit 34 just related to two specific vouchers. It
12 recommended that you consider suspending these particular
13 portions of the payments requested on these two particular
14 vouchers.
15 Yet, obviously, the issue involved, I take it,
16 would keep recurring with each voucher, to the extent that
17 each voucher would be claiming payment for the time sharing
18 costs, the data center costs.

19 And my question in light of that is, when you
20 suspended, did you suspend from that point forward all, so
21 much of each voucher, or just specifically suspend on
22 vouchers that had then already been submitted?

Sparco

68021

1 A. I did not retroactively suspend money. There
2 is no way to do that. by all the personnel involved.

3 Q. No, I didn't mean retroactively. I don't have
4 the precise facts here in front of me, but let's just assume
5 that when you make your decision to issue a letter
6 suspending, at that particular time INSLAW has three
7 vouchers that they have presented for payment. And you make
8 your decision that you are going to suspend a certain part
9 of each one of those three. Am I --

10 A. It's a bad example. We tried to process
11 INSLAW's vouchers as quickly as we can, we did not try to --

12 Q. Suppose you only have one when you make your
13 decision. The point I am trying to get at is, was your
14 decision to just suspend the one that was then pending or
15 however many were then pending and not acted on, or was your
16 decision also to tell them, look, not only are we suspending
17 on these vouchers, we are going to suspend on every future
18 voucher for time sharing costs on this same rationale until
19 this thing gets settled to our satisfaction, do you

20 understand -- you have any present recollection as to
21 whether A. What decision are you talking about, sir?

22 Q. The decision you say was reflected in your

Sparco

68021

1 letter A. I did not retroactively suspend money. There
2 is no way to do that. by all the personnel involved.

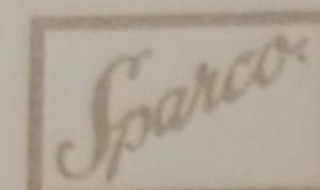
3 Q. No, I didn't mean retroactively. I don't have
4 the precise facts here in front of me, but let's just assume
5 that when you make your decision to issue a letter
6 suspending, at that particular time INSLAW has three
7 vouchers that they have presented for payment. And you make
8 your decision that you are going to suspend a certain part
9 of each one of those three. Am I --

10 A. It's a bad example. We tried to process
11 INSLAW's vouchers as quickly as we can, we did not try to --

12 Q. Suppose you only have one when you make your
13 decision. The point I am trying to get at is, was your
14 decision to just suspend the one that was then pending or
15 however many were then pending and not acted on, or was your
16 decision also to tell them, look, not only are we suspending
17 on these vouchers, we are going to suspend on every future
18 voucher for time sharing costs on this same rationale until
19 this thing gets settled to our satisfaction, do you
20 understand --

21 A. What decision are you talking about, sir?

22 Q. The decision you say was reflected in your



68021

1 letter that was drafted by Ms. Nagy and described, I mean,
2 reviewed and considered by all the personnel involved.

3 A. The suspension letter which I issued with
4 respect -- I don't have a copy of it here, so I can't
5 comment.

6 Could we please have it?

7 Q. I don't have the thing, myself.

8 A. Could I say something off the record?

9 (Off-the-record discussion.)

10 MS. SPOONER: Are we going to be able to come
11 up with that letter?

12 MR. KELLOGG: I don't have it in front of me.

13 MS. SPOONER: I thought I had it.

14 MR. KELLOGG: Off the record.

15 (Off-the-record discussion.)

16 BY MR. KELLOGG:

17 Q. Mr. Videnieks, we have not been able to locate
18 at the moment a copy of your suspension letter that we have
19 been referring to here.

20 Do you have any present recollection as to
21 whether or not the suspension letter that you testified
22 about merely suspended portions of then pending vouchers, or

Sparco

68021

1 whether it also suspended future, portions of future
2 payments attributable to time sharing costs? Was this a
3 notice that future payments on that issue would be
4 suspended, as well?

5 A. My present recollection is that the letter,
6 which I have not seen, dealt with the two vouchers in
7 question, only.

8 Q. Is it your recollection that subsequent
9 payments, or subsequent requests for payments were also
10 suspended in the same manner as the ones that were submitted
11 before this letter, the suspension letter that you are
12 talking about?

13 A. Yes.

14 Q. Mr. Videnieks, just quickly I want to go back a
15 question or two relating back to Mr. Rugh's May 6, '83 memo,
16 which is Exhibit 31.

17 Did you ever have occasion to give a copy of
18 this memorandum to anyone at INSLAW, and I am not talking
19 about in discovery, but during the existence of the
20 contract?

21 A. What does did I have occasion mean, did I give
22 it or did I not give it to them?

1 Q. Yes, did you ever give it to them?

2 A. I don't recall.

3 Q. If you had given it to them, you would recall,
4 wouldn't you?

5 A. I am not sure.

6 Q. Do you have any recollection --

7 A. I normally don't hand out internal memoranda.

8 Q. So presumably, you didn't give it to them;
9 isn't that right?

10 A. I don't recall.

11 Q. Well, the memo and the whole issue was a
12 response to the request or the notice or however you want to
13 call it from Murray Hannon on April 8; isn't that right?

14 A. I do not understand your question.

15 Q. This memo, Exhibit 31, was prepared as a
16 comment, commenting on the request that was made by Murray
17 Hannon of April 8; isn't that right?

18 A. What was Murray Hannon's request of April 8, I
19 would like to look at it.

20 MS. SPOONER: Look at Exhibit 30.

21 BY MR. KELLOGG:

22 Q. It's just the statement that the use of the

Sparco

68021

1 time sharing was above the estimated levels --

2 A. His overrun proposal.

3 Q. Well, that is the government's
4 characterization.

5 MS. SPOONER: Maybe it would help if you could
6 refer to these by document numbers because he has probably a
7 couple dozen exhibits in front of him.

8 MR. KELLOGG: Well, the April 8 memo is Exhibit
9 30, isn't it?

10 THE WITNESS: Yes, sir.

11 MS. SPOONER: Yes.

12 BY MR. KELLOGG:

13 Q. My question is this 31, which is Mr. Rugh's May
14 6 memo, that was his comments on Mr. Hannon's Exhibit 30
15 request, wasn't it?

16 A. No, sir, it was his technical analysis of that
17 overrun proposal.

18 Q. Which proposal was made in Mr. Hannon's April 8
19 letter that is Exhibit 30; isn't that right?

20 A. Yes, sir.

21 Q. All right. Now, did you ever have occasion to
22 discuss with Mr. Hannon the particulars of Mr. Rugh's

Sparco

68021

1 technical analysis that is contained in this Exhibit 31?

2 A. I don't recall.

3 Q. Do you think it's likely that you did?

4 A. I don't recall.

5 Q. Did you ever write Mr. Hannon and ask him to
6 address any of these issues that Mr. Rugh had identified
7 here in his memo of May 6?

8 A. I don't recall.

9 Q. If you had, you would recall it, wouldn't you?

10 A. No, sir.

11 Q. You might have done that, sir?

12 A. I might have.

13 Q. But you don't recall doing it?

14 A. I don't recall, sir.

15 MS. SPOONER: Can we go off the record for a
16 moment?

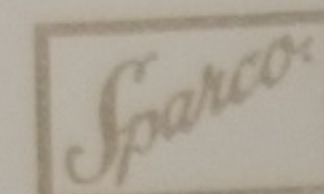
17 MR. KELLOGG: Sure.

18 MR. KELLOGG: Mark this as Exhibit 35.

19 (Deposition Exhibit 35 was marked for
20 identification.)

21 (Recess.)

22 BY MR. KELLOGG:



68021

1 Q. I asked the reporter before we recessed to mark
2 as Exhibit 35 a memorandum dated, looks like September 1 of
3 1983, anyway, September something, 1983, from Mr. Rugh, to
4 you.

5 (Witness examines document.)

6 A. Okay, I have scanned it.

7 BY MR. KELLOGG:

8 Q. Exhibit 35, is that a copy of a memorandum from
9 Mr. Rugh to you, dated in September of 1983?

10 A. Yes, sir.

11 Q. Does that appear to be a follow-up to Mr.
12 Rugh's earlier May 6, 1983, memo to you about the technical
13 analysis of the time sharing costs on INSLAW's contract?

14 A. It refers to the May 6 memo.

15 Q. Would it be fair to call this a supplement to
16 his earlier memo, some further thoughts that he's had on the
17 matter, further analysis, if you will?

18 A. It appears to be that.

19 Q. Whereas his earlier memo had recommended that
20 what seemed to be a reasonable figure for time sharing costs
21 I believe was \$17,500 a month, in this memo does he not
22 indicate that a reasonable figure would be perhaps 50,000 a

Sparco

68021

1 month?

2 A. I don't recall. Again, I don't want to go into
3 comparison of these technical memoranda, the contents in
4 them, because they were furnished to me for advice and to
5 see whether your numbers are correct, I would have to go
6 back to the other memoranda to see what the 17-5 pertained
7 to.

8 Q. Do you have any recollection as you sit here
9 that after giving you the first memo, the May 6 memo, which
10 indicated the view as a technical matter that something in
11 the range of \$17,500 a month would be an appropriate cost --

12 A. For what?

13 Q. For the time sharing computer center costs.

14 A. I would have to review it if the 17-5 was
15 totally, or to what extent it was for time sharing costs.

16 Q. In any event, no question that Mr. Rugh's
17 earlier memo of May 6 mentioned the figure of \$17,500 a
18 month, does it not?

19 A. Which page?

20 Q. Yes, it's in almost the last line of the last
21 page, and it's not in numbers, it's written out -- no, I
22 take that back.

Sparco

68021

1 MS. SPOONER: Mr. Kellogg, I think it's on page
2 3, paragraph numbered 5. I think it may be repeated
3 elsewhere, too.

4 MR. KELLOGG: Yes, you are right.

5 BY MR. KELLOGG:

6 Q. Do you see that there?

7 A. Yes, sir.

8 Q. The sum of the four costs described above is
9 \$17,500 a month?

10 A. Yes, sir.

11 Q. Let me ask you this, do you recall at any time
12 after May 6, 1983, getting any information from Mr. Rugh
13 either in the form of this memo, Exhibit 35, or any other
14 information from him, revising the figures that he had set
15 forth in his earlier May 6 memo?

16 A. No, I don't recall.

17 Q. You have no recollection of his ever giving you
18 any revision of the numbers in that earlier memo?

19 A. I have no current recollection.

20 Q. Mr. Videnieks, this time sharing computer
21 center costs dispute, was that ever resolved, sir, before
22 INSLAW went into bankruptcy?

Sparco

68021

1 A. What do you mean by resolved?

2 Q. Well, was the dispute between the parties,
3 between the government on the one hand and INSLAW on the
4 other, about whether INSLAW's time sharing computer center
5 costs that they claimed, whether those were appropriate and
6 proper or not, was that ever resolved before they went into
7 bankruptcy?

8 A. I issued a final decision. The matters in
9 front of the board, Department of Transportation Board of
10 Contract Appeals.

11 Q. All right.

12 A. When one issues a final decision, it's a final
13 decision.

14 Q. When roughly did you issue a final decision on
15 that issue, do you recall?

16 A. I issued four final decisions under this
17 contract.

18 Q. On this issue, I am talking about.

19 A. This issue may have been contained in several
20 or one or all, I don't remember specifically in which of
21 those final decisions included this specific issue.

22 Q. All right. But it's fair to say, isn't it,

Sparco

68021

1 that this question, among others, that is, the time sharing
2 computer center cost question, was still the subject of
3 discussions between INSLAW and the department, right up past
4 the time that they filed for bankruptcy; isn't that right?

5 Wasn't Ms. Sposato involved in negotiations
6 that included that issue, among others?

7 A. Yes, but I was not a part of those
8 negotiations, so therefore I am speculating by saying
9 that -- I think she was involved in that.

10 Q. All right.

11 A. But I don't know to what detail, what the
12 issues, specific detailed issues.

13 Q. All right. Did you ever become aware of a
14 meeting on December 22, 1983, attended by Elliott
15 Richardson, Mr. Hamilton, Mr. Sherzer, there may have been
16 somebody else from INSLAW, I don't remember, and Mr. Rooney,
17 who I believe then was the assistant attorney general in
18 charge of the Justice Management Division, in an effort to
19 resolve both the computer time sharing cost issue and a
20 separate issue involving the word processor portion of the
21 contract, the delay and the issues that arose from that, did
22 you ever learn of a meeting of that sort being held on that

Sparco

68021

1 date?

2 A. I don't remember dates that well.

3 Q. Did you ever hear that such a meeting was held,
4 whatever date it was?

5 A. Again, I cannot be specific with respect to the
6 individuals attending.

7 I do know that Richardson has met more than
8 once with DoJ officials.

9 Q. Did you ever hear of Richardson meeting with
10 Rooney, specifically?

11 A. I was at one of those meetings, Rooney wasn't
12 there. But I really can't comment specifically as to who
13 was where when. I know there were meetings.

14 Q. But my question is, did you ever hear from any
15 source that Elliott Richardson and Mr. Hamilton met with Mr.
16 Rooney regarding those questions, the time sharing question
17 and the word processor question?

18 A. Ever?

19 Q. Yes, ever. Did you ever hear that they met on
20 those issues?

21 A. Again, I cannot answer you with accuracy from
22 my recollection that with respect to the attendees.

Sparco

68021

1 date?

2 A. I don't remember dates that well.

3 Q. Did you ever hear that such a meeting was held,
4 whatever date it was?

5 A. Again, I cannot be specific with respect to the
6 individuals attending.

7 I do know that Richardson has met more than
8 once with DoJ officials.

9 Q. Did you ever hear of Richardson meeting with
10 Rooney, specifically?

11 A. I was at one of those meetings, Rooney wasn't
12 there. But I really can't comment specifically as to who
13 was where when. I know there were meetings.

14 Q. But my question is, did you ever hear from any
15 source that Elliott Richardson and Mr. Hamilton met with Mr.
16 Rooney regarding those questions, the time sharing question
17 and the word processor question?

18 A. Ever?

19 Q. Yes, ever. Did you ever hear that they met on
20 those issues?

21 A. Again, I cannot answer you with accuracy from
22 my recollection that with respect to the attendees.

1 date?

2 A. I don't remember dates that well.

3 Q. Did you ever hear that such a meeting was held,
4 whatever date it was?

5 A. Again, I cannot be specific with respect to the
6 individuals attending.

7 I do know that Richardson has met more than
8 once with DoJ officials.

9 Q. Did you ever hear of Richardson meeting with
10 Rooney, specifically?

11 A. I was at one of those meetings, Rooney wasn't
12 there. But I really can't comment specifically as to who
13 was where when. I know there were meetings.

14 Q. But my question is, did you ever hear from any
15 source that Elliott Richardson and Mr. Hamilton met with Mr.
16 Rooney regarding those questions, the time sharing question
17 and the word processor question?

18 A. Ever?

19 Q. Yes, ever. Did you ever hear that they met on
20 those issues?

21 A. Again, I cannot answer you with accuracy from
22 my recollection that with respect to the attendees.

Sparco

68021

1 Q. Specifically all I am concerned about
2 specifically is those three people, Hamilton --

3 A. I do not recollect.

4 Q. All right. In any event, did you have occasion
5 to attend a meeting of the PROMIS oversight committee on
6 December 29, 1983?

7 A. Again, I cannot be specific with respect to
8 dates. I personally have not ever been in front of the
9 oversight committee as in its full capacity, full standing.
10 I may have met with some individuals who serve on that
11 committee individually.

12 Q. All right.

13 A. I have never been called before it.

14 Q. Who of the people on the committee do you
15 recall ever meeting --

16 A. I don't even know who is on it, who was on it.
17 I assume that Bill Tyson may have been on it.

18 Q. Yes, I believe he was.

19 A. And I have met Bill Tyson.

20 Q. I am sure you have met and discussed parts of
21 this with Bill Tyson.

22 A. No, sir.

1 Q. You have not?

2 A. Tyson is a high level government official, and
3 I did not -- he may have called me during the three or
4 four-year period once or twice, but I don't recollect,
5 called me to attend, to come to his office or something
6 where I may have met there with other people. I don't
7 recall meeting with the guy.

8 Q. Did it ever come to your attention from any
9 source of any kind that the PROMIS oversight committee did
10 meet on December 29, 1983, and that at that meeting they
11 determined and directed that proceedings be commenced to
12 terminate the word processing portion of the INSLAW contract
13 for default, did that ever come to your attention?

14 A. No, sir.

15 Q. No one ever told you that the committee had
16 made that decision on that date?

17 A. To the best of my current recollection, no.

18 Q. Well, during this period of, say, the last half
19 of 1983, was it an issue that you were considering, or that
20 ever came up for your consideration, whether or not the word
21 processing part of the INSLAW contract should be terminated
22 either for default or for convenience?

Sparco

68021

1 A. It may have come under my consideration. I
2 think that is the time period when -- strike that.

3 Q. I take it whatever the time period was, at some
4 point that issue certainly came under your consideration,
5 did it not?

6 A. Yes, because I issued the notice of
7 termination.

8 Q. Eventually, you did issue the notice
9 terminating the word processing portion of the contract for
10 convenience; isn't that correct?

11 A. Yes, sir.

12 Q. Not for default, but for convenience?

13 A. Yes, sir.

14 Q. As a matter of fact, initially you were
15 considering terminating it for default, and then eventually
16 decided to terminate not for default, but for convenience;
17 is that correct?

18 A. Yes, sir.

19 Q. Now, who participated in the decision-making
20 process on that question?

21 A. What question?

22 Q. The question of whether to terminate the word

Sparco

68021

1 processing portion of the contract and, if so, on what
2 grounds.

3 A. EOUSA and JMD.

4 Q. All right.

5 A. As far as I know.

6 Q. With respect to EOUSA, did Mr. Mike Snyder
7 participate in discussions regarding that?

8 A. With me, yes.

9 Q. Did Mr. Jack Rugh participate in discussions
10 regarding that subject?

11 A. With me, yes.

12 Q. Did Mr. Brewer participate in discussions with
13 you regarding that?

14 A. Yes.

15 Q. And did Mr. Snyder express an opinion as to
16 whether or not he felt that the word processing portion of
17 the contract should be terminated for default?

18 A. I believe he did.

19 Q. And what was that opinion?

20 A. I think -- I think EOUSA submitted a memorandum
21 originally requesting termination for default, but that is
22 the best of my recollection and I think Mike may have been

1 instrumental in preparing that memorandum.

2 Q. All right. Do you recall whether Mr. Brewer
3 approved that memorandum, or was that strictly from Mr.
4 Snyder or Mr. Rugh?

5 A. I don't recall who signed it or what signatures
6 were on it.

7 Q. In any of your discussions that you had on the
8 subject, did Mr. Rugh indicate what his view was about
9 whether there should be termination for default of the word
10 processor part of the contract?

11 A. I don't recall specific discussions with
12 specific individuals.

13 Q. However, Mr. Rugh was aware of the problems in
14 the word processing implementation area.

15 Q. Do you recall what his view was, whether it
16 should be terminated or not?

17 A. Since 20 months into the contract there was not
18 one successful word processing site implementation, I
19 believe that all concerned DoJ officials felt partial
20 termination of the contract was proper.

21 Q. That would include Mr. Brewer, as well as Mr.
22 Rugh?

1 A. I think so, yes.

2 Q. As a matter of fact, it also included other
3 people from the JMD, besides yourself, is that right?

4 A. I believe at that time Bill Snider was still on
5 board. If so, he would have been involved, personnel from
6 his office, my supervision.

7 Q. In any event would it be your recollection that
8 this decision was essentially unanimous amongst all the
9 participants at the department who --

10 A. The decision was mine.

11 Q. Well, I understand it was yours.

12 A. Singular.

13 Q. I understand it was yours to make and you did
14 make it. But were the views of everyone who participated in
15 giving you input on the question, were they essentially
16 unanimous, that this thing should be terminated?

17 A. Terminated.

18 Q. Yes.

19 A. With respect to termination, I don't want to be
20 as specific as unanimous. I don't recall specifically any
21 objections.

22 Q. Do you recall anyone voiceing any objections to

1 terminating on the ground of default, as opposed to
2 convenience?
3

4 A. I recall receiving an advisory memorandum from
5 counsel. Other to the best of my recollection.

6 Q. This would be Mr. Bill Snider?

7 A. Yes.

8 Q. All right.

9 A. Discussing the pros and cons. It was a
10 one-page memorandum, I believe, the pros and cons of
11 terminating for default or for convenience.

12 Q. Was that memo, did that weigh in your
13 consideration in deciding to terminate for convenience, as
14 opposed to default, Mr. Snider's memo?

15 A. Yes, sir.

16 Q. You decided to terminate for convenience
17 instead of default?

18 A. Based upon that memorandum and other
19 considerations.

20 Q. All right. But you don't recall anyone else
21 involved in giving you input voiceing the view that
22 termination should be based on convenience, as opposed to
default?

1 A. The decision was completely mine. However --
2 since I signed the document. However, management was
3 informed. So -- I received no specific directions to do one
4 or the other to the best of my recollection.

5 However, management was informed and in fact
6 saw the two respective notices of termination, one for D,
7 another for C.

8 (Off-the-record discussion.)

9 THE WITNESS: I would just mention I did
10 prepare a notice of termination for default and notice of
11 termination for convenience, because management expressed
12 interest to see the wording.

13 I don't recall specific direction to proceed
14 one way or another. My action was based primarily on legal
15 advice.

16 BY MR. KELLOGG:

17 Q. I don't want to get into the specifics of it,
18 but do you recall what consideration that it was that caused
19 you finally to determine to terminate for convenience, as
20 opposed to default?

21 MS. SPOONER: At this point on the ground of
22 attorney-client privilege I want to caution the witness not

1 to indicate the contents of the memo from Mr. Snider.
2

3 MR. KELLOGG: Fair enough.

4 A. If I cannot reveal the contents of that
5 memorandum, I can't answer the question.

6 BY MR. KELLOGG:

7 Q. All right, so that to your --

8 A. Is that memo around here or not?

9 Q. I don't think it was revealed to us as they
10 claim privilege and it may be inappropriate to claim it. In
11 any event, to the best of your recollection, the principal
12 basis for your decision to terminate for convenience, as
13 opposed to default, was the legal advice that you got from
14 Mr. Snider; is that correct?

15 A. Yes.

16 Q. Now, going back to this computer center time
17 sharing cost issue, I recall you testified that after you
18 got Mr. Rugh's original memo on the subject in May of '83,
19 that you asked for some input from audit people, and they
20 eventually gave you some, gave you some recommendations that
21 you eventually followed regarding suspending a part of the
22 payments.

Did audit have any further involvement in this

1 time sharing cost issue, to your recollection?

2 A. Yes.

3 Q. Their involvement eventually developed into a
4 full scale audit, didn't it?

5 A. Audit of what?

6 Q. The time sharing costs and the facts
7 surrounding that issue.

8 A. Yes.

9 Q. As a matter of fact, that audit actually
10 continued clear up until October of 1984, before you finally
11 got an audit report on the subject; isn't that right?

12 A. I can't be specific with respect to dates.

13 Q. Well, it was sometime in the fall of '84 when
14 you finally got an audit report, wasn't it?

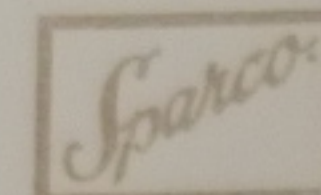
15 A. Could I please see it to see if that is true or
16 not?

17 Q. Before I get to.

18 MR. KELLOGG: Before I get to that, let me mark
19 this as Exhibit 36, please.

20 (Deposition Exhibit 36 was marked for
21 identification.)

22 (Witness examines document.)



68021

1 A. I have read it.

2 BY MR. KELLOGG:

3 Q. Have you ever seen that memo before, Exhibit
4 36?

5 A. I think I have.

6 Q. This appears to be a memo dated August 24,
7 1984. It's directed from a Guy Zimmerman, director of the
8 audit staff, to Kamal Rahal, director of the procurement and
9 contract staff

10 Now I take it Mr. Rahal, he was your superior ;
11 is that right?

12 A. Yes, sir.

13 Q. The memo refers to the fact that at this
14 particular time, August of '84, the audit staff is
15 "currently conducting a total cost audit of INSLAW, Inc.,
16 for the fiscal period October 1, '82, to September 30, '83."

17 Q. Would this appear to be related to the audit
18 that I asked you about earlier that continued into '84?

19 A. Generally, yes. But audit staff is very
20 specific as to what they call a total cost audit, an audit.
21 So I really cannot recollect what generated the total cost
22 audit.

1 Q. Whatever may have generated it, it is clear in
2 the second sentence there that at least this memo is raising
3 a question regarding a computer center cost issue, is it
4 not? actively adjust it.

5 A. Raising a question? 'actual' SRU rate would be

6 Q. Yes, raising a question. is concerned an

7 A. What question is that? 'carried forward' to

8 Q. If you will read the second sentence of the
9 memo. Now, you say you believe you did get a copy of

10 A. It's a statement.

11 Q. He's asking to know how to treat --

12 A. Second sentence of the memorandum? sent or any

13 input Q. "We will soon be at a point where it will be
14 essential to know how to treat the INSLAW computer center
15 rate." Q. From you.

16 A. That is a declaratory statement.

17 Q. All right. But my point is, I guess, that he's
18 talking about issues related to the computer center costs;
19 isn't that right, in this memo? o, sir.

20 A. Yes. it would seem to me that the thrust of

21 this f. Q. He goes on in there to say, "Specifically, we
22 need to know if the SRU rate is a 'provisional rate' or a

Sparco

1 rate 'fixed with carry forward provision.' If it is
2 provisional, we will treat it in the same manner as the
3 provisional overhead rate. If it is fixed, we cannot
4 retroactively adjust it.

5 "In other words, the 'actual' SRU rate would be
6 a moot point as far as fiscal year '83 is concerned an
7 over/under allocation could only be 'carried forward' to
8 subsequent fiscal years."

9 Now, you say you believe you did get a copy of
10 this memorandum?

11 A. I believe so.

12 Q. Did Mr. Rahal ever ask for any comment or any
13 input in providing a response to this memo?

14 A. From whom?

15 Q. From you.

16 A. Me. I don't recall.

17 Q. Do you recall assisting in preparing any
18 response to this memo?

19 A. Not specifically, no, sir.

20 Q. Now, it would seem to me that the thrust of
21 this first paragraph is that if this SRU for INSLAW had been
22 a fixed with carry forward provision rate, as opposed to a

Sparco

68021

1 provisional rate, then he's saying that it cannot be
2 retroactively adjusted. (Pause.)

3 Do you think that is a fair interpretation of
4 that, as you read it?

5 A. Which sentence are you talking about?

6 Q. Well, where he says, after he says,
7 "Specifically we need to know if it is a provisional rate or
8 a rate 'fixed with carry forward provision.'"

9 He goes on to say, "If it is provisional, we
10 will treat it in the same manner as a provisional overhead
11 rate. If it is fixed, we cannot retroactively adjust it. "

12 A. You are reading from the memorandum.

13 Q. Yes. You asked me what sentence I am reading
14 from.

15 A. We have both read it.

16 Q. Okay, and my question to you is, am I correct
17 in reading that that he is saying that if the rate is fixed
18 with carry forward provision, it can't be adjusted
19 retroactively?

20 Is that a fair interpretation of that?

21 A. I believe you are not interpreting, you are
22 reading what the man wrote, and you appear to be reading it

Sparco

68021

1 correctly. *to anything else?*

2 *A. He may be referring to the* (Pause.) *of -- as I*

3 testified *as* BY MR. KELLOGG: *ent covers provisional rates,*

4 *totally* Q. Going back to Exhibit 28, the negotiation
5 agreement, we talked about earlier there on the front page
6 under subparagraph C, under computer center, INSLAW's
7 computer center rate for fiscal year '83 would appear to be
8 labeled fixed with carry forward provision, wouldn't it?

9 A. Which is fiscal year '83?

10 Q. 10-1-83 to 9-30-83, the bottom line.

11 A. The words to the left-hand side of that line
12 read "Fixed with carry forward provision."

13 Q. All right. Do you have any reason to believe
14 that this term that you just read is not the item that this
15 memo, Exhibit 36, is referring to?

16 *Q.* In other words, do you have any reason to *of the*
17 believe that Mr. Zimmerman in this memo is referring to
18 anything other than this --

19 A. I have no reason to believe that he is
20 referring specifically to these words on this page on this
21 particular document, unless you can point it out to me. *not*

22 *area* Q. Do you have any reason to believe he is

Sparco

68021

1 referring to anything else?

2 A. He may be referring to the concept of -- as I
3 testified earlier, this document covers provisional rates,
4 totally.

5 Q. All right.

6 A. As they pertain to my contract.

7 MR. KELLOGG: Mark this as Exhibit 37.

8 (Deposition Exhibit 37 was marked for
9 identification.)

10 BY MR. KELLOGG:

11 Q. Take a look at that, please, what is marked as
12 Exhibit 37.

13 (Witness examines document.)

14 A. I have looked at it.

15 BY MR. KELLOGG:

16 Q. Does that Exhibit 37 appear to be a copy of the
17 final audit report regarding the computer center cost
18 issues?

19 A. No, sir.

20 Q. Whether it's final or not, does --

21 A. It's what it says it is in the title, subject
22 area of the memorandum.

Sparco

68021

1 Q. Well, it is a report to you, isn't it, of an
2 audit of the computer center costs and charging system
3 methodology of INSLAW, Inc., for the fiscal year ending
4 September 30, 1983?

5 A. Yes, sir.

6 Q. All right. And as a matter of fact, this is
7 the audit that was ultimately generated by the questions
8 which arose from INSLAW's notification that the computer
9 center costs were going to be above what was estimated back
10 in April of '83; isn't that right?

11 A. No, sir.

12 Q. What was there that caused this audit to be
13 done other than matters that resulted from INSLAW's April,
14 '83 notification?

15 A. I believe it was an annual report. I believe
16 the audit staff audits contracts, significant contracts by
17 fiscal year.

18 Q. But this isn't an audit --

19 A. I mean the cost reimbursement contracts require
20 audit support and this is typical of audit support.

21 Q. I understand that, sir, but this is not an
22 audit of the whole contract, this is just an audit of the

Sparco

68021

1 computer center costs?

2 A. Yes, sir.

3 Q. Isn't that right?

4 A. For that fiscal year.

5 Q. For that fiscal year. That was the fiscal year
6 that you were concerned with that was brought to your
7 attention in Mr. Hannon's April 8, 1983, letter, wasn't it,
8 fiscal year 1983?

9 A. The request for recognition of that overrun in
10 Mr. Hannon's letter may have fallen in fiscal year 1983.

11 Q. All right, and so that this audit, which
12 relates to INSLAW's computer center costs for that fiscal
13 year, that certainly would be an outgrowth of the issue
14 raised by Mr. Hannon's letter; isn't that right?

15 A. What is unclear to me, and I have not reviewed
16 this report again to refresh my memory, is whether this
17 report is contract-specific or a total cost audit. If you
18 wish, I could take that time to review it.

19 Q. I don't want you to take, have to read it line
20 by line. If there is someplace quickly that you can look by
21 recollection and see to answer that, yes, go ahead.

22 (Pause.)

Sparco

68021

1 A. Okay, under the scope, section 1 of this audit
2 report, I don't see reference to a contract number.
3 Similarly, I do not see on the first page of the report,
4 reference to any contract number.

5 When the report speaks to over charge, at this
6 point in time I cannot comment with respect to your
7 questions as to what the over charge pertains to, the
8 contract or all government business or what.

9 Q. Except that --

10 A. Without reviewing this thing.

11 Q. Except that as we said earlier, the negotiation
12 agreement that fixes the SRU rate --

13 A. Is government-wide.

14 Q. Is government-wide and would apply to all of
15 INSLAW's contracts, correct?

16 A. Subject to the applicable regulations and
17 discretionary action by the cognizant contracting officer on
18 each contract.

19 Q. All right. But to the extent that as a result
20 of Mr. Hannon's letter of April of '83, that raised issues
21 regarding the proper calculation of INSLAW's computer center
22 costs that would inevitably get into questions of the proper

Sparco

68021

1 SRU rate, which in turn relates possibly to all of INSLAW's
2 government contracts; isn't that right?

3 A. I don't want to speculate, sir. I would like
4 to, before I give you answers, I would like to find them in
5 this report. Mr. Vidanick, I asked you, I believe, earlier

6 Q. When you testified that the SRU rate fixed by
7 negotiation agreement would be applicable to all government
8 contracts with INSLAW, subject to applicable regulation and
9 certain discretionary action, do you mean by that, sir, that
10 you would have the discretion to change the SRU rate in a
11 given situation? you weren't personally involved; is that

12 A. No, sir.

13 Q. All right, that answers my question. Well, I
14 want to finish this up. contract was in litigation, as

15 opposed to Is it your testimony that this audit report,
16 Exhibit 37, may be something that resulted from Mr. Hannon's
17 notification back in April of '83, or it may not, you just
18 can't tell? what the nature of those negotiations were, but

19 A. I have received several advisory reports from
20 the audit staff during the administration of the contract
21 that we are discussing. Mr. Hannon's overrun proposal could
22 very well have played a role with respect to this particular

Sparco

68021

1 report. *ed from time to time to provide some information.*

2 Q. All right, that's fine. *of whatever*

3 *information, if any, you may have learned (Pause.)*

4 BY MR. KELLOGG: *and her team participated in,*

5 Q. Mr. Videnieks, I asked you, I believe, earlier
6 whether or not Ms. Sposato at some point, I believe
7 commencing in 1984 and continuing into the time after INSLAW
8 filed for bankruptcy, whether she had any role in

9 discussions with INSLAW people trying to resolve these
10 various disputes, and I believe you testified you thought
11 that she did, but you weren't personally involved; is that
12 correct? *a number of INSLAW employees who actually had*

13 A. *worked* I was not a part of that particular negotiation
14 team. At that time the contract was in litigation, as
15 opposed to administration, and Janice Sposato was, I
16 believe, in charge of the team participating in those
17 litigation or prelitigation, I am really not -- cannot
18 comment on what the nature of those negotiations were, but
19 she was the head of those negotiations. *was hearing any*

20 Q. While she may have been the head of it, your
21 testimony is that you, yourself, were not involved in --

22 A. As I said, sir, I was not part of that team. I

Sparco

68021

1 was called from time to time to provide some information.

2 times Q. All right. In the course of whatever
3 information, if any, you may have learned as a result of the
4 discussions that Ms. Sposato and her team participated in,
5 did it ever come to your attention that Ms. Sposato had
6 learned that, in fact, INSLAW had something like 17 people
7 whose work was actually devoted to the operation of this
8 computer center?

9 involve A. I don't specifically recall that number.

10 assert Q. Do you ever recall learning that there were a
11 number of INSLAW employees that Ms. Sposato had learned that
12 there were a number of INSLAW employees who actually had
13 worked on the computer center and related services, and that
14 the number was significantly above the three that Mr. Rugh
15 had mentioned in his May, '83, memo? Do you ever remember
16 anybody telling you that?

17 counter A. I don't specifically recall now whether anyone
18 told me anything of that sort.

19 dollar Q. Generally you don't recall ever hearing any
20 such thing as that from anybody?

21 four A. I don't really recall at this point.

22 see Q. Was your advice, your participation, your

Sparco

68021

1 input, solicited by anybody on Ms. Sposato's team at various
2 times in these negotiations that she held?

3 A. My advice, I would say, generally, no, to the
4 best of my recollection.

5 Q. How about your input?

6 A. Factual information from the contract file,
7 from time to time, yes.

8 Q. At some point, I believe Ms. Sposato was
9 involved in making judgments about the government's
10 assertion of a counterclaim in the government contract
11 appeals case in which INSLAW had claimed, I guess it was an
12 appeal from your one or more of your final decisions.

13 Do you recall any input being sought from you
14 as regards the preparation of a counterclaim in the contract
15 appeals case?

16 A. I signed the final decisions containing the
17 counterclaim dollar amounts.

18 Q. Do you recall roughly what those counterclaim
19 dollar amounts were?

20 A. No, I would have to look at each one of those
21 four final decisions. They covered several cost areas, to
22 see what they were.

1 Q. But the total counterclaim asserted was anybody
2 substantially more than INSLAW was claiming was owed them by
3 the government, wasn't it?

4 A. I don't know.

5 Q. It could have been, couldn't it?

6 A. Let's look at the decisions.

7 Q. You don't recall as you sit there whether or
8 not it was more than what INSLAW was claiming?

9 A. I don't specifically recall right now. I would
10 like to examine those decisions and see what those specific
11 dollar amounts were before I testify.

12 Q. All right. In any event, recognizing that you
13 signed them, who prepared the documents asserting the
14 counterclaim that you signed?

15 A. I did.

16 Q. In preparing them, did you get any input from
17 Ms. Sposato?

18 A. Very little, if any.

19 Q. Did you get any input from anybody in the
20 executive office?

21 A. I received their concurrence but not
22 necessarily input, because we dealt with historical data.

1 Q. Do you recall soliciting any input from anybody
2 that was important to you before you made your decision as
3 to asserting the counterclaim?

4 A. As I stated before, the final decisions were
5 based upon historical data, most of any supporting
6 information or documentation that I needed was already in
7 the contract file, the final decisions, to the best of my
8 knowledge now, were concurred to by counsel and EOUSA.

9 Q. Do you recall having any discussions with Mr.
10 Rugh about this issue of asserting a counterclaim before you
11 actually did it?

12 A. Which counterclaim are you talking about?

13 Q. Any of them.

14 A. I can't give you that kind of an answer. There
15 were four final points that were -- as well as the
16 counterclaim, that were issued over a period of time, maybe
17 a year, maybe two years.

18 Again, I am speaking to the best of my
19 recollection with respect to those time periods.

20 Q. You are saying you don't have any specific
21 recollection of talking to Mr. Rugh about asserting any of
22 those counterclaims?

1 A. I don't specifically recall that.

2 Q. Do you ever remember Mr. Rugh advocating that
3 you should file a counterclaim on any of these final
4 decisions?

5 A. No.

6 Q. Do you ever remember Mr. Mike Snyder ever
7 advocating or recommending that you should file a
8 counterclaim on any of these final decisions?

9 A. Not specifically, sir.

10 MS. SPOONER: Do you really mean to ask this
11 witness if he should file a counterclaim?

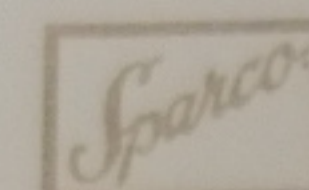
12 MR. KELLOGG: No, I thought my question was
13 does he recall these particular people in the executive
14 office ever advocating to him that he, the contracting
15 officer, should a certain a counterclaim.

16 MS. SPOONER: In the board proceedings?

17 MR. KELLOGG: I take it he did it in his final
18 decision or in connection with his final decision.

19 MS. SPOONER: We just have a terminology
20 problem. But if you mean that he should issue a final
21 decision, is that what I understand your question to be?

22 MR. KELLOGG: My problem obviously is, I don't



1 understand the intricacies of the process.

2 Off the record a minute.

3 (Off-the-record discussion.)

4 MR. KELLOGG: Let's go on the record.

5 BY MR. KELLOGG:

6 Q. Mr. Videnieks, maybe I have confused the issue
7 here unwittingly. But I thought I recalled you testifying
8 that you, at some point, prepared and signed counterclaims
9 with respect to some or all of the final decisions that you
10 had made in this contract; is that correct?

11 A. No, it's not correct.

12 Q. Did I misunderstand you?

13 A. What's correct is I signed and prepared four
14 final decisions.

15 Q. All right.

16 A. In which one or more of those decisions a
17 counterclaim was included in one or more cost categories.

18 Q. All right. So with respect to that that you
19 just testified you did, my question is, do you recall Mr.
20 Rugh ever advocating or recommending to you that you should
21 include in any of those final decisions a counterclaim on
22 particular cost categories?

1 A. I don't recall, sir.

2 Q. Do you recall Mr. Brewer ever advocating or
3 recommending that you should assert a counterclaim in a
4 particular cost category in any of your final decisions?

5 A. No, sir.

6 Q. You are pretty sure Mr. Brewer did not
7 recommend that to you or advocate that to you?

8 A. Pretty sure. I don't think he was involved in
9 the process. He may have been informed about it, but not
10 involved in the process.

11 (Pause.)

12 BY MR. KELLOGG:

13 Q. Do you, as you sit here today, recall whether
14 any of your final decisions which contained one of these
15 counterclaims, do you recall whether any of those were
16 asserted and issued after INSLAW filed its bankruptcy
17 petition?

18 A. I believe one or more of those four final
19 decisions was dated in '86.

20 Q. All right. And do I recall correctly that
21 there was some testimony either from you or from Mr. Miller
22 of the trustee's office that you had mentioned to Mr. Miller

Sparco

68021

1 A. I don't recall, sir.

2 Q. Do you recall Mr. Brewer ever advocating or
3 recommending that you should assert a counterclaim in a
4 particular cost category in any of your final decisions?

5 A. No, sir.

6 Q. You are pretty sure Mr. Brewer did not
7 recommend that to you or advocate that to you?

8 A. Pretty sure. I don't think he was involved in
9 the process. He may have been informed about it, but not
10 involved in the process.

11 (Pause.)

12 BY MR. KELLOGG:

13 Q. Do you, as you sit here today, recall whether
14 any of your final decisions which contained one of these
15 counterclaims, do you recall whether any of those were
16 asserted and issued after INSLAW filed its bankruptcy
17 petition?

18 A. I believe one or more of those four final
19 decisions was dated in '86.

20 Q. All right. And do I recall correctly that
21 there was some testimony either from you or from Mr. Miller
22 of the trustee's office that you had mentioned to Mr. Miller

Sparco

68021

1 the possibility that the government would a certain a
2 counterclaim on any of these contract issues?

3 A. I don't recall, but you'd have to refresh my
4 memory. I talked with Mr. Miller. I don't recall right now
5 what the discussions -- whether the discussions involved my
6 final decisions or not.

7 Q. Without your deposition transcript in front of
8 me, I can't remember, myself. But in any event --

9 A. I remember questions in that area being asked
10 in the first deposition that was taken from me.

11 Q. In any event as you sit here, you don't recall
12 whether you would have mentioned anything about that to Mr.
13 Miller or not?

14 A. I may have mentioned it, but I can't recall
15 what I mentioned to him.

16 Q. Do you recall at some point in the Sposato
17 negotiations, do you recall learning that Ms. Sposato and
18 the government team had determined to make an offer to
19 INSLAW to settle the whole matter with a payment by INSLAW
20 to the government of \$60,000?

21 Do you recall learning that such an offer was
22 made by Ms. Sposato?

Sparco

68021

1 A. I recall learning about settlement offers by
2 either side. I don't recall the specifics. There may have
3 been several.

4 That dollar amount does not particularly jump
5 out at me. I am not saying that I did not learn about any
6 offer, but I don't specifically recall.

7 MR. KELLOGG: Mark this as Exhibit 38.

8 (Deposition Exhibit 38 was marked for
9 identification.)

10 (Witness examines document.)

11 MS. SPOONER: Do I have a copy of that?

12 MR. KELLOGG: You should.

13 MS. SPOONER: 1985?

14 MR. KELLOGG: Yes, it should be about the last
15 one.

16 MS. SPOONER: I have it. Thank you.

17 A. I have read my memorandum.

18 BY MR. KELLOGG:

19 Q. Is this a copy of a memo that you wrote to
20 Janice Sposato, dated October 21, 1985?

21 A. Yes, sir.

22 Q. In that memo do you indicate to her that you

Sparco

68021

1 disagree with the negotiating team's offer that INSLAW pay
2 \$134,526 as the total additional computer center costs?

3 A. That's what the memorandum says I think, yes.

4 Q. Do you indicate that you also disagree with the
5 team's stated overall objective for negotiation of achieving
6 a wash of all claims as against INSLAW's claims?

7 A. That is what the memorandum states.

8 Q. Do I take it correctly that, in your view, the
9 negotiation team should have sought to recover additional
10 monies from INSLAW and they should not have tried to achieve
11 an objective of just walking out with neither side paying
12 the other any money? You disagreed with such an approach?

13 A. I state so in this memorandum that I disagree
14 with such an approach.

15 Q. Well, do you recall taking that position, sir?

16 A. Yes.

17 Q. Before you wrote this memo, I notice that you
18 sent a copy to Mr. Brewer, Mr. Rugh, Mr. Mike Snyder and Mr.
19 Zazzaro.

20 Did you have any discussions with Mr. Brewer
21 about this subject before you wrote the memo, sir?

22 A. I don't specifically recall.

Sparco

68021

1 Q. Do you think it's likely you had any
2 discussions with him?

3 A. It's more likely that I spoke with Mike Snyder,
4 the audit staff and Jack Rugh on that matter before I would
5 have spoken to Brewer. But I don't rule out the possibility
6 that I spoke with him.

7 Q. All right. Whoever you may have spoken with,
8 do you recall anybody from the executive office expressing
9 any views to you on this issue, that is, whether the
10 negotiation team's positions, whether they agreed or
11 disagreed with the negotiation team's positions?

12 A. I don't recall.

13 Q. Do you think it's possible that Mr. Rugh or Mr.
14 Snyder would have expressed any views to you on this
15 subject, whether they agreed or disagreed?

16 A. It's possible, yes.

17 Q. As you sit here today, do you recall either one
18 of them ever voicing any view on this question to you; do
19 you recall them doing that?

20 A. Who?

21 Q. Either Rugh or Snyder, Mike Snyder.

22 A. Not specifically, no.

Sparco

68021

1 Q. Do you recall generally anybody from the
2 executive office expressing any view --

3 A. To the best of my recollection at this point, I
4 believe I generally discussed this subject with all or some
5 of the people who received copies of this memorandum, as
6 indicated at the bottom.

7 Q. As you sit here today, you don't have any
8 recollection of any of those people who received copies
9 having expressed opposition to the views that you set forth
10 here in this memo, do you?

11 A. No, sir, those are my views, my personal views
12 on the matter as the cognizant contracting officer.

13 Q. I understand that they are your views, Mr.
14 Videnieks.

15 A. But the question I asked you was, do you recall
16 any of the people who were copied on your memo ever
17 expressing any objections to these views in any discussions
18 that you may have had with them?

19 A. No, sir, and I don't think they were in a
20 position to.

21 Q. I have got a few, maybe more than a few, kind
22 of a laundry list of things that I want to try to conclude

Sparco

68021

1 with here.

2 Mr. Videnieks, did you ever receive any contact
3 at any point from the time you started working on this
4 INSLAW, the RFP that preceded this contract, up until today,
5 did you ever receive any contact from anyone outside of the
6 Justice Department in any other government agency about this
7 contract or about INSLAW?

8 A. Was your question, outside, including both
9 government and nongovernment organizations?

10 Q. No. First the question is did you ever get
11 contacted about INSLAW or about this contract by anybody
12 outside the Department of Justice?

13 A. Yes, sir.

14 Q. Who?

15 A. The Department of Transportation Board of
16 Contract Appeals' lawyer to whom I sent -- There were two
17 lawyers who received copies of my -- of the appeal file.

18 Q. But these would be lawyers that essentially
19 would be representing the department's interest in this
20 administrative appeal, is that --

21 A. Yes, sir.

22 Q. Is that correct?

Sparco

68021

1 I contact personnel in the audit staff, discuss
2 it with them. *Take a look at Exhibit 32, please.*

3 Q. Do you ask them to perform some type of an
4 audit, or to give some type of analysis on their part to
5 help you make a decision here?

6 A. I don't recall specific events, I can't
7 identify them specifically, what happened after this point.
8 But I do recall that as a result of INSLAW's overrun
9 notification, the government began investigating or
10 analyzing the data center costs. *(Pause.)*

11 Q. And as you have testified, you contacted the
12 people in audit to get some further assistance on this
13 question; isn't that right? *Mr. Kellogg, I have a question for you.*

14 A. Yes. *1981, regarding a discussion between*

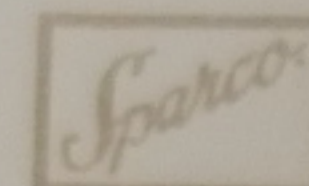
15 Q. In the course of this process of essentially
16 trying to decide what to do about this question, did you
17 have any discussions with Mr. Brewer?

18 A. I can't remember specific discussions. That
19 does not mean there weren't any. *He recalls that his*

20 MR. KELLOGG: Mark this as Exhibit 32.

21 (Deposition Exhibit 32 was marked for

22 identification.) *large of 414,000.*



1 BY MR. KELLOGG:

2 Q. Take a look at Exhibit 32, please.

3 (Witness examines document.)

4 BY MR. KELLOGG:

5 Q. This appears to be --

6 A. I am still reading, sir.

7 Q. Sure.

8 A. May I finish it, please?

9 Q. All right, go ahead.

10 (Pause.)

11 A. I have read it.

12 BY MR. KELLOGG:

13 Q. This appears to be a memo to the file from Mr.
14 Rugh, dated May 18, 1983, reciting a discussion between
15 yourself, Mr. Whiteley, who I take it is an audit person, Al
16 Gibson and himself, regarding the issues raised in his
17 memorandum; is that correct?

18 A. Yes, sir.

19 Q. Later on in the memo he recites that his
20 memorandum suggests that a reasonable charge for time
21 sharing should not exceed \$17,500 a month and that the
22 latest voucher contained a monthly charge of \$106,000.

Sparco

68021

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. It contains a charge of \$64,000 for time sharing.

And it proceeds to indicate in the last paragraph that the group briefed Brick Brewer and Mike Snyder on the issues.

Do you recall this meeting that was described here in this memorandum?

A. The group briefing, or --

Q. No, I am speaking first of the meeting with yourself, Mr. Whiteley, Gibson and Mr. Rugh.

A. Not specifically, no, sir.

Q. Do you recall a briefing by those persons, including yourself, of Mr. Brewer and Mr. Snider on this issue?

A. I don't recall.

MR. KELLOGG: Mark this as Exhibit 33, please.

(Deposition Exhibit 33 was marked for

identification.)

(Witness examines document.)

A. This refreshes my memory with respect to

Sparco

68021

1 Exhibit 32.

2 BY MR. KELLOGG:

3 Q. Speaking now of 33, does that appear to be a
4 copy of three pages of handwritten notes of a memo you
5 prepared to the file, dated May 18 of '83, regarding a
6 meeting that date, apparently the same meeting referred to
7 in Exhibit 32, Mr. Rugh's memo?

8 A. Yes, sir.

9 Q. Does that refresh your recollection in terms of
10 whether you or the group in your presence briefed Mr. Brewer
11 about this question?

12 A. Yes, sir.

13 Q. Do you have any present recollection of any
14 particular role that Mr. Brewer played, anything he may have
15 contributed to this matter that was being discussed?

16 A. No, sir.

17 Q. You don't recall any particular statements
18 about the issue that he made?

19 A. I don't recall.

20 Q. You don't recall any particular directives that
21 he may have given as to how he wanted this thing to be
22 handled?

Sparco

68021

1 A. I don't recall.

2 Q. On the second page, about halfway through
3 there, you have a sentence that begins, it looks like
4 "voucher number 37 in the amount of 265," I believe it is
5 503 dollars, "was given to R. Whiteley for examination and
6 recommendation of the amount to be withheld."

7 Is that what that says, sir?

8 A. Yes, sir. I think so.

9 Q. Would it be fair to conclude that that was at
10 least one of the actions that the assembled group at this
11 meeting took, namely, to give this then pending voucher to
12 Mr. Whiteley and get his recommendation as to how much
13 should be withheld?

14 A. The memorandum says that the voucher was given
15 to Bob Whiteley. The timing, I can't speculate on.

16 Q. Well, may I take it that your memo would
17 indicate that the voucher was given to him at or as a
18 consequence of this meeting on May 18; isn't that right?

19 A. That's what the memorandum would appear to say.

20 Q. I take it, do you have any recollection of
21 giving him voucher 37 and asking him to make a
22 recommendation on it?

1 A. No, sir.

2 Q. In any event I take it there is no question
3 that that in fact did occur?

4 A. Yes, sir.

5 Q. And eventually, Mr. Whiteley or someone in his
6 organization made a recommendation to you about that issue,
7 didn't they?

8 A. Eventually, I think so.

9 Q. As a matter of fact they recommended that you
10 do withhold significant amounts from that voucher, as well
11 as later vouchers; isn't that right?

12 A. I think so, yes.

13 MR. KELLOGG: Mark this as Exhibit 34, please.

14 (Deposition Exhibit 34 was marked for
15 identification.)

16 (Witness examines document.)

17 A. I have read it.

18 BY MR. KELLOGG:

19 Q. Is that a copy of a memo that you received from
20 the audit staff, dated May 24, 1983?

21 A. Yes, sir.

22 Q. Is this a response to the action that the group

Sparco

68021

1 took on the May 18 meeting giving this voucher 37 to Mr.
2 Whiteley in audit to be reviewed and make a recommendation
3 about withholding?

4 A. I cannot correlate the amounts. The amounts
5 appear to be different in this memorandum than they are in
6 the prior two memos unless there have been additions, so
7 should we work that out?

8 Q. Well, they appear to be, at least this Exhibit
9 34 refers, among other things, to voucher number 37, doesn't
10 it?

11 A. Yes.

12 Q. That is the same voucher that is referred to in
13 your handwritten notes, isn't it, that you gave to Mr.
14 Whiteley?

15 A. Yes.

16 Q. So although I recognize there is --

17 MR. KELLOGG: Strike that.

18 BY MR. KELLOGG:

19 Q. As you read the memo, referring now to Exhibit
20 34, is this a recommendation that 58,198 be withheld from
21 voucher 37?

22 A. It's a recommendation that I consider

Sparco

68021

1 suspension.

2 Q. But in that amount on that voucher?

3 A. Yes, sir.

4 Q. All right. So I guess it's possible that your
5 handwritten memo refers to the total that the voucher is
6 for, 200 and some thousand?

7 A. I can't comment on it without further analysis.

8 Q. All right, I am just saying it's possible that
9 the voucher claimed a total amount of well in excess of this
10 and that this memo here, 34, is just speaking to how much
11 they recommend that you consider suspending of the total.

12 A. I like to be specific with dollar amounts. If
13 we could see the voucher --

14 Q. Well, I understand, and it's not important, I
15 don't think, for purposes of this question how much the
16 voucher was.

17 There is no question in your mind this Exhibit
18 34, whatever amount the voucher was, they are recommending
19 to you that you consider suspending paying \$58,198 on
20 voucher 37; isn't that right?

21 A. Yes, sir.

22 Q. It's also clear they are recommending that you

Sparco

68021

1 consider suspending paying \$67,168 on voucher 39? other
2

3 A. Yes, sir.

4 Q. Now it's also clear, isn't it, that the
5 recommendation that I just recited there, that that is based
6 on the questions raised and the information provided in Mr.
7 Rugh's May 6, 1983, memo?

8 A. Yes, sir.

9 Q. When you gave the matter to audit or you made
10 your request to audit that they give you some input on this
11 and make a recommendation, did you give them any other
12 information besides that contained in Mr. Rugh's memo?

13 A. I don't recall, but there were numerous
14 telephone conversations and meetings, I imagine, concerning
15 this question.

16 Q. I guess what I should confine my question to is
17 that in terms of a technical analysis about what charges
18 might or might not be appropriate under the contract for the
19 time sharing costs, did you give them any information
20 relating to that other than Mr. Rugh's May 6, '83, memo?

21 A. I don't recall.

22 Q. Do you recall having any other information on
that technical analysis besides Mr. Rugh's memo?

Sparco

68021

1 A. I don't recall. There may have been other
2 memoranda in existence.

3 Q. If there were, where would they have likely
4 come from, from whom?

5 A. They could have also come from the office of
6 information technology.

7 Q. Is that someplace that is outside of the
8 executive office of the U.S. attorneys?

9 A. Justice Management Division, I am not sure
10 whether there were any such memoranda at this time.

11 Q. Do you recall asking for any input from them on
12 this question?

13 A. I don't recall.

14 Q. In any event, this Exhibit 34 would appear to
15 indicate that the audit people's recommendation was based
16 solely on Mr. Rugh's memo; isn't that right?

17 A. No.

18 Q. What would cause you to say that the memo,
19 Exhibit 34, would indicate that they based their
20 recommendation to you on anything other than Mr. Rugh's
21 memo?

22 A. There is nothing in the memorandum to indicate

1 that.

2 Q. There is nothing in the --

3 A. The original was solely. I don't know whether
4 solely is the right word to use.

5 Q. All right, but the memo does indicate clearly
6 that this recommendation is based on the information
7 contained and the questions raised in Mr. Rugh's memo?

8 A. Yes, sir.

9 Q. It doesn't indicate that it's based on anything
10 else?

11 A. That's what this particular memo seems to say.

12 Q. Just tell me what your recollection is, what
13 transpired regarding this time sharing issue after you
14 received this May 24 memo from the audit staff recommending
15 that you consider suspending these specific amounts on these
16 two vouchers?

17 A. I generally recollect seeking advice of
18 counsel, further discussions with EOUSA personnel, with
19 audit personnel, and then preparing and having reviewed
20 alibi those respective offices which I just mentioned prior
21 to issuance of such suspension letter to the contractor.

22 Q. So that if I understand you correctly, your

Sparco

68021

1 recollection is that after you got this Exhibit 34 with the
2 recommendation that you consider suspending, you had further
3 discussions with people in the executive office for U.S.
4 attorneys?

5 A. Yes, sir.

6 Q. Now, in those discussions, did Mr. Rugh
7 participate in those discussions?

8 A. I don't specifically recall that.

9 Q. But I take it it's likely he would have, isn't
10 it?

11 A. Yes, sir.

12 Q. It's also likely that Mr. Brewer would have
13 participated in those discussions?

14 A. To the extent of his availability, yes, sir, if
15 he were there.

16 Q. But you don't recall --

17 A. No, sir.

18 Q. -- him participating?

19 A. No, sir, I don't want to speculate.

20 Q. Generally, what position did Mr. Rugh, I mean
21 what position generally did the executive office take about
22 whether these payments should be suspended?

Sparco

68021

1 A. Yes, sir.

2 Q. I am not talking about. Apart from those
3 people, did you ever get contacted by anyone else outside
4 the Department of Justice about either INSLAW or this
5 contract?

6 A. A journalist or reporter from a law review
7 magazine requested contract documents under the Freedom of
8 Information Act, I think. I may not have specifically
9 handled that request or I may have. Or I may even be
10 confusing contracts here.

11 Q. Would this be the National Law Journal?

12 A. It could be, it could be. And we processed
13 that request through the freedom of information people.

14 Q. Do you recall getting a specific contact from a
15 reporter about that?

16 A. I may be confusing contracts. It may not be
17 this particular contract. But I think that a --

18 To answer your question, this may have been
19 another situation. But really, without going through, I
20 don't even know whether I have records anymore.

21 Q. Apart from that contact, if that related to
22 this contract, do you recall any other contact by anyone

1 outside the Department of Justice, either about this
2 contract or about INSLAW?

3 A. Once I think I received a telephone call from
4 an individual who had questions in a financial area, I
5 think, with this contract. I referred that call to the
6 audit staff.

7 I don't really remember who the individual was
8 or the nature, more specific nature of the questions, or
9 when it took place, within the year. I can't even pin down
10 the year.

11 Q. Did this person identify himself?

12 A. May have. Sure he did, of course.

13 Q. It was a man?

14 A. I believe it was a man.

15 Q. And did he indicate that he was representing
16 INSLAW in any way?

17 A. No, it was, I believe he did not represent
18 INSLAW but he had a question concerning INSLAW. It was a
19 question completely out of my area.

20 I don't remember, even though I administered
21 the contract, it was a financially oriented question and I
22 referred the man to the audit staff.

Sparco

68021

1 Q. Was this the type of question that someone
2 would be asking if they were considering trying to buy
3 either the whole company or some of INSLAW's products?

4 A. Could have been, but I don't recall.

5 Q. Do you remember who in the audit staff that you
6 referred this person to, sir?

7 A. No, sir.

8 Q. Do you recall whether this was before or after
9 INSLAW filed its Chapter 11 petition in bankruptcy?

10 A. I don't recall.

11 Q. Do you think it was during the time that the
12 contract was still in effect, or was it, had it run its
13 course?

14 A. Again, I don't recall.

15 Q. Other than this incident and the reporter, do
16 you recall getting any other contacts from anybody outside
17 the Department of Justice about INSLAW or about the
18 contract?

19 A. I don't recall specifically.

20 Q. Do you think you could have?

21 A. I could have, but I really don't recall.

22 Q. Do you recall ever receiving any contact from

Sparco

68021

1 any customers or creditors of INSLAW?

2 A. I don't recall, the gentleman we referred to a
3 short while ago may have represented either a customer or
4 creditor, but I don't really recall.

5 Q. I am excluding that call in my question. Do
6 you ever recall getting a call or contact of any kind from
7 anybody at IBM?

8 A. Not specifically, no.

9 Q. Do you ever recall getting a contact or
10 telephone call from anybody at AT&T?

11 A. Not specifically, no.

12 Q. Do you ever recall getting any contact or
13 telephone call from anybody at Wang?

14 A. No, sir.

15 Q. Do you recall ever learning from any source
16 that Mr. Rugh had had any contact from any person outside
17 the Department of Justice regarding INSLAW or the contract?

18 A. I believe EOUSA at one time or another spoke
19 with a state government, but I don't recall specifics.

20 Q. How did you learn of that fact?

21 A. I can't recall.

22 Q. Do you think it would have been Mr. Rugh or Mr.

Sparco

68021

1 Mike Snyder that told you that?

2 A. I can't recall, sir.

3 Q. Do you have any recollection as to what time
4 period the contact by the executive office with a state
5 government might have been?

6 A. No, sir.

7 Q. Do you think it would have been during the time
8 that the contract was in effect?

9 A. I don't recall.

10 Q. Do you remember anything about what information
11 was communicated to the state government?

12 A. No, sir.

13 Q. Do you ever recall Mr. Rugh --

14 MR. KELLOGG: Strike that.

15 BY MR. KELLOGG:

16 Q. Apart from that contact with the state
17 government, if it did occur, did you ever learn from any
18 source that Mr. Rugh had had any contact with anyone else
19 from outside the Department of Justice regarding INSLAW or
20 this contract?

21 A. During the life of the contract, now my
22 memory -- I, Mike Snyder and Jack Rugh did communicate with

Sparco

68021

1 respect to contract administration matters, basically
2 government-furnished equipment, with the respective
3 representatives from the hardware contractors.

4 Q. That would be, I believe --

5 A. Schedule -- PRIME and Lanier, basically
6 scheduling deliveries of hardware and this type of thing.

7 Q. Do you ever recall discussing with either PRIME
8 or Lanier personnel anything about INSLAW's performance
9 under the contract?

10 A. Not specifically, no.

11 Q. Do you --

12 A. It may have occurred. The area of scheduling,
13 itself, is related to the performance, performance against
14 time. So in that respect as it pertains to government
15 delivery of government-furnished equipment and schedules
16 contained in the respective three contracts and how they
17 interrelate, that is a performance related area.

18 Q. Did you ever learn from any source that Mr.
19 Brewer had any contact either with PRIME or with Lanier on
20 this, about the contract or about INSLAW?

21 A. The team of cognizant personnel, including me,
22 Mike Snyder, at one time, Carol Sloan, we dealt with the

Sparco

68021

1 contractor representatives from the particular contracts
2 involved and administered those contracts. At times there
3 were overlapping areas in those contracts.

4 Q. Well, my question is, do you know or did you
5 ever learn from any source that Mr. Brewer had any contact
6 with anybody from either PRIME or Lanier about INSLAW?

7 A. I have seen people from PRIME and Lanier meet
8 with Mr. Brewer on business matters.

9 Q. Related to INSLAW?

10 A. No, I don't know what they talked about.

11 Q. Did you ever learn from any source that Mr.
12 Brewer had ever made any statements critical of INSLAW to
13 anyone outside the Department of Justice?

14 A. No, sir.

15 Q. Did you ever learn that Mr. Rugh had ever made
16 any statements critical of INSLAW to anyone outside the
17 Department of Justice?

18 A. No, sir.

19 Q. Did you ever learn from any source that Mr.
20 Mike Snyder had made any statements critical of INSLAW to
21 anyone outside the Department of Justice?

22 A. No, sir.

Sparco

68021

1 MR. KELLOGG: Let's take about five minutes.
2

3 (Recess.)

4 MR. KELLOGG: Would you mark this as Exhibit
5 39, please.

6 (Deposition Exhibit 39 was marked for
7 identification.)

8 (Witness examines document.)

9 BY MR. KELLOGG:

10 Q. Looking at Exhibit 39, Mr. Videnieks, speaking
11 about the first page of it, this appears to be a copy of
12 handwritten notes that you made on 5-9-83; is that correct?

13 A. Yes.

14 Q. I would like you if you would for the record to
15 just read what you wrote there, starting with the date?

16 A. 5-9-83. Tell econ JR/MS/PV --

17 Q. Excuse me, just let me interject a second, if I
18 could.

19 Where you have abbreviations in your memo, if
20 you can recall now what they mean, if you would just state
21 what they mean from your recollection, I would appreciate
22 it.

A. Telephone conversation, Jack Rugh, slash, Mike

Sparco

68021

1 Snyder, slash, Pete Videnieks, regarding Harvey Sherzer's
2 letter of 5-4-83. PROMIS software data rights. J R has
3 revised -- I mean, Jack Rugh has revised letter --
4

5 Q. Do you think it could be reviewed letter?
6

7 A. Reviewed letter and feels contractor can't
8 support claim of privately financed enhancements.
9

10 Q. Enhancement development, maybe?
11

12 A. Enhancement development. Jack Rugh has memo
13 drafted evaluating letter. It will include three
14 alternatives for discussion with Bill Snider.
15

16 1. Flat out denial of contractor's proposed
17 method and government decision that contractor has failed to
18 substantiate (Jack Rugh; --
19

20 Q. Does it say drastic, do you think?
21

22 A. Drastic)
23

24 2. Response that method is not acceptable and
25 suggest acceptable method.
26

27 3. Response that contractor has not
28 substantiated claim and ask them to substantiate-however
29 they wish, i.e., don't agree to any method. We all were of
30 the opinion that the government should not get locked into
31 agreement as to how INSLAW proves their claim. Since they
32

1 made the claim, proof should be readily available.
2

3 Jack Rugh's memorandum will be done Wednesday
4 and he will be back Friday. (-- looks like A L S. I don't
5 know what that means.

6 Q. Doesn't it say B B, Brick Brewer?

7 A. I was looking at A L S, before that.

8 Q. Also.

9 A. Also B B, that would be Brick Brewer, has
10 written letter regarding copyright; looks like -- looks
11 like, my words, looks like Lanier, doesn't make any sense
12 but that is what it looks like.

13 Q. Then is that your initial down at the bottom of
14 the page?

15 A. Yes.

16 Q. All right.

17 A. I am not sure that word Lanier, I don't know
18 what -- It could be Lanier; it could not be Lanier.

19 Q. I take it that it the memorandum you made of
20 the telephone conversation between yourself, Mike Snyder and
21 Mr. Rugh on May 9, 1983?

22 A. Yes, sir.

Q. Is it fair to conclude from that that your memo

1 indicates that Mr. Rugh was indicating that there were three
2 alternative possible responses to INSLAW's proposed
3 methodology for proving the privately financed enhancements;
4 is that correct?

5 A. No.

6 Q. Does your memo indicate that his memo would
7 include three alternatives for discussion with Mr. Snider,
8 Mr. Bill Snider?

9 A. Yes.

10 Q. One of those alternatives that was going to be
11 in his memo for discussion with Mr. Snider was a response
12 that the proposed method was not accepted able and to
13 suggest an acceptable method; isn't that right?

14 A. That is what the memorandum says.

15 Q. Do you recall Mr. Rugh suggesting in this
16 telephone call or mentioning in this telephone call what an
17 acceptable method would be?

18 A. I don't recall, no, sir.

19 Q. But it's fair to conclude from this memo, isn't
20 it, that he thought he would be able to put together an
21 acceptable method?

22 A. No.

1 Q. That is not fair to conclude, sir?

2 A. Let's read it again, sir. Response that method
3 is not acceptable and suggest acceptable method. If there
4 is one. We planned to plan a meeting to discuss approaches
5 not necessarily limited to these three. I don't recall the
6 specific meeting.

7 Q. All right. But at the very least, at this
8 point your memo would indicate that Mr. Rugh thought that it
9 was at least possible that he could suggest an acceptable
10 method at that time whether eventually he was able to do
11 that or not?

12 A. No, sir, that is not what I read from that
13 note. Explore.

14 Q. Where does it say explore?

15 A. Where does it say possible?

16 Q. It says one of the alternatives is suggest an
17 acceptable method, right?

18 Reject the one they proposed and suggest an
19 acceptable method. That is one of the alternatives he is
20 going to lay out in his --

21 A. On the table for exploration.

22 Q. On the table for discussion.

Sparco

68021

1 A. As to feasibility.

2 Q. All right. Presumably he must have thought
3 that he could suggest an acceptable method or he wouldn't
4 have put that out as a possible alternative at that time,
5 would he?

6 A. No.

7 Q. All right.

8 (Pause.)

9 MR. KELLOGG: Mark this as Exhibit 40.

10 (Deposition Exhibit 40 was marked for
11 identification.)

12 (Witness examines document.)

13 A. I have read it.

14 BY MR. KELLOGG:

15 Q. Mr. Videnieks, does that appear to be a copy of
16 a memorandum dated in September of '83 from Mr. Zazzaro of
17 the audit staff to you about this computer center time
18 sharing issue?

19 A. Regarding the computer center cost allowability
20 issue as it pertains to the contract in question.

21 Q. This was, again, arising out of the issue that
22 Mr. Rugh had addressed in his May 6, '83 memo, and again I

Sparco

68021

1 believe in a supplemental memo in September of '83; isn't
2 that right?

3 A. I would have to examine those memoranda to
4 agree with the dates you mentioned.

5 Q. In any event, down in the first page there
6 towards the bottom, Mr. Zazzaro makes a statement that it
7 had been recommended that \$50,000 a month be allowed for
8 computer center time sharing costs, and he goes on to make
9 the statement that there may be costs above the 50,000 that
10 represent legitimate government obligations.

11 This is still on the first page and I'm
12 paraphrasing. I don't have it in front of me.

13 Do you see what I am referring to there?

14 A. Yes, sir.

15 Q. Can you just read his words there when he talks
16 about there may be something in excess of 50,000?

17 MS. SPOONER: Starting with the "accordingly"?

18 BY MR. KELLOGG:

19 Q. Yes.

20 A. "Accordingly, recommend that allowable billings
21 for time share services should be limited to \$50,000 per
22 month.

1 "However, he offered that time share billings
2 in excess of \$50,000 a month may include bona fide
3 obligations of the federal government."

4 Q. Do you recall this meeting that this memorandum
5 speaks about here?

6 A. Vaguely.

7 Q. Do you recall Mr. Zazzaro raising a question
8 about the fact that allowing \$50,000 a month, that there
9 might be some government obligation legitimately above that
10 amount, do you remember him expressing that view?

11 A. I don't, because aren't these Jack Rugh's
12 words?

13 Q. In other words, you think this is Zazzaro
14 saying that Rugh is saying --

15 A. I think so, from the appearance of the
16 memorandum, that could be the case.

17 Q. About that time did you suspend payments above
18 \$50,000 a month on the basis of this meeting and other
19 meetings that you had?

20 A. I don't recall, sir. Each voucher received
21 specific attention, each voucher is specifically annotated,
22 reflecting the amount withheld or suspended or actually

1 subtracted from the amount billed. It was done on a voucher
2 by voucher basis.

3 Q. Do you recall as you sit there ever withholding
4 an amount --

5 MR. KELLOGG: Strike that.

6 BY MR. KELLOGG:

7 Q. Do you ever recall suspending payment of all
8 amounts in excess of \$50,000 for computer time sharing costs
9 on any particular voucher?

10 A. I would have to examine the specific vouchers.
11 The amounts suspended in some cases were above \$50,000.

12 Q. Maybe I didn't ask my question right, but as I
13 read this memo, what this memo is saying, there was a
14 recommendation to allow 50,000 a month for this cost and to
15 suspend paying anything in addition to 50,000, anything
16 above 50,000 a month. Is that correct --

17 A. I don't think that is what this memorandum,
18 which -- I won't continue with that sentence.

19 I don't think that is what this memorandum says
20 on page 2.

21 Q. How do you read it?

22 A. I will read it. "The PRIME individuals at the

Sparco

68021

1 September 9 meeting agreed to support the COTR's
2 recommendation regarding the \$50,000 monthly amount and
3 invoke the contractual 60/40 relationship to the excess over
4 \$50,000 monthly to protect the government's 60 percent share
5 of any overrun."

6 Q. So you would read that as being a
7 recommendation that there be a suspension of payments beyond
8 a level above 50,000?

9 A. Do you want me to read it again?

10 Q. No, I know what the words say, but you were at
11 the meeting, I take it, and you know the issue and I don't.

12 A. The issue is accurately reflected here in that
13 sentence which I just read.

14 Q. I understand that they are saying --

15 A. I can't say anything more than is written
16 there.

17 Q. It's because you have no recollection --

18 A. No, I understand it and I cannot expand on it.

19 Q. Do you recall that particular meeting and what
20 was decided there?

21 A. As I stated earlier, I generally recall it.

22 Q. Do you recall taking any action with respect to

Sparco

68021

1 suspending computer center costs --

2 A. As I just stated I took action --

3 Q. Let me finish my question.

4 A. I took action on each voucher individually and
5 suspended the required amounts.

6 Q. Do you read this memo, Exhibit 40, I believe it
7 is, as recommending a particular suspension only with
8 respect to specific, certain specific vouchers?

9 A. I read that memo as recommending a rationale
10 for suspension of computer center costs from cost
11 reimbursement vouchers at some given period of time.

12 Q. Do you ever recall making decisions to suspend
13 parts of particular requested amounts for computer center
14 costs based on this rationale recommended in the memo?

15 A. Yes, but I don't recall how many vouchers.

16 Q. All right. Have you ever heard of a case
17 tracking system, the acronym for which is USACTS?

18 A. Yes, but that is about as much as I know about
19 it.

20 Q. Do you understand it to be a case tracking
21 system that works on word processing machines?

22 A. No. It could very well.

Sparco

68021

1 Q. You just don't know one way or the other?

2 A. I am not familiar. I have heard the acronym.
3 It may very well be word processing orientated, but I don't
4 know that much about it.

5 Q. Did you ever hear that this system with this
6 acronym had been utilized by any of the U.S. attorneys
7 offices?

8 A. I believe it was utilized in the field.

9 Q. Did you ever hear that in substance this case
10 tracking system with that acronym was in reality a version
11 of the word processing software that INSLAW had developed
12 under the EOUSA pilot contract?

13 A. I don't recollect.

14 Q. You never recall hearing that?

15 A. I don't recall hearing that.

16 MS. SPOONER: Excuse me. May I hear the
17 witness's second to last answer?

18 (The reporter read as directed.)

19 BY MR. KELLOGG:

20 Q. Mr. Videnieks, in February, 1984, INSLAW
21 submitted a proposal after the termination of the word
22 processing part of the contract to expand the number of

1 computer based sites from what was in the existing contract
2 at the time. but I do recall exchanging memoranda with him.

3 Q. Do you recall that proposal?

4 A. To who did they submit it to? his proposal, and

5 I recall Q. To you? written evaluation of that proposal.

6 And has A. To me? I receive -- I recollect having
7 received one or more unsolicited proposals.

8 Q. Well, this -- conclude from that that the EXUSA

9 evaluated A. This may have been one. proposal?

10 Q. This proposal, I do believe, was referred to
11 within the government generally as "an unsolicited
12 proposal." that you accept this proposal?

13 A. Now, ultimately, I believe you rejected this
14 proposal; is that correct? and that you reject it?

15 A. I'd like to see my letter to see whether I did
16 or not. Did you ever learn that that particular

17 proposal Q. I don't have it in front of me. Do you recall?

18 of the A. I think I may have rejected it. Jensen, made to

19 Donald Q. All right. Assuming that you did reject it, do
20 you recall any discussions with Mr. Brewer on that subject
21 as to whether you should reject it or what his views were
22 about it? that he would look with favor on finding funds for

Sparco

68021

1 A. I don't recall discussions with him
2 specifically, but I do recall exchanging memoranda with him.

3 Q. All right.

4 A. Asking the EOUSA to evaluate this proposal, and
5 I recall receiving a written evaluation of that proposal.
6 And based upon that evaluation, I issued my rejection
7 notice.

8 Q. Is it fair to conclude from that that the EOUSA
9 evaluation memo was negative on this proposal?

10 A. No.

11 Q. Did the EOUSA memorandum of evaluation
12 recommend that you accept this proposal?

13 A. No.

14 Q. Did they recommend that you reject it?

15 A. I think they recommended that I reject it.

16 Q. Did you ever learn that that particular
17 proposal was submitted as a result of a specific suggestion
18 of the then deputy attorney general, Lowell Jensen, made to
19 Donald Sandrelli, an INSLAW attorney at the time?

20 A. No, sir.

21 Q. Did you ever hear Mr. Jensen had told Mr.
22 Sandrelli that he would look with favor on finding funds for

Sparco

68021

1 such a proposal?

2 A. No, sir.

3 Q. Did you ever hear that Mr. Jensen told Mr.
4 Sandrelli that he, Mr. Jensen, did not hold INSLAW
5 responsible or he did not think they were at fault for the
6 failure of the word processing portion of the contract?

7 A. I don't recall, sir.

8 Q. You would recall if you had ever heard that,
9 wouldn't you?

10 A. It's possible.

11 Q. But you don't recall hearing that?

12 A. No, sir.

13 Q. Did you ever attend any meetings or briefings
14 regarding PROMIS or INSLAW where Mr. Jensen was present?

15 A. No, sir, I don't recall.

16 Q. Did Mr. Brewer or any other department
17 officials mention, in your presence, anything about any
18 meetings that they may have had with Mr. Jensen about PROMIS
19 or about INSLAW?

20 A. They may have, I don't recall specifically
21 anyone mentioning meetings.

22 Q. If anyone had, do you think it would be someone

Sparco

68021

1 in the executive office?

2 A. Either the executive office or JMD. Those are
3 the two primary groups of people I dealt with.

4 Q. Did you ever receive any commendations, awards
5 or bonuses for performance during your service as the
6 contracting officer on the INSLAW contract?

7 A. General bonuses, the federal government has
8 what's called a -- it's a merit system of sorts. If one
9 gets a certain rating there is a cash award or a cash bonus,
10 I guess private industry would refer to it as. And I think
11 every year I have been there I received something.

12 Q. Is this what is described as the Senior
13 Executive Service, sir?

14 A. I wish I were. The answer is no. I was -- no,
15 sir.

16 Q. Do you recall in rough terms the amounts of any
17 bonuses that you got during these years?

18 A. There are five levels of rating, or maybe four,
19 and I received always the -- I think the first year I got
20 the outstanding, the years after that it was one level
21 before that and the amounts varied somewhere, I think this
22 last year was like 1500 bucks.

Sparco

68021

0 1 See, I get confused what the percentage
2 increase when they passed this general government -- it's
3 somewhere in the area of a thousand dollars or less,
4 something like that.

5 Q. Did you ever learn that Mr. Brewer ever got any
6 cash bonuses or awards or commendations during the pendency
7 of the INSLAW contract?

8 A. I very generally recollect that at one time in
9 one year he was rated high, and may have received some
10 award.

11 A. But I don't know, that is about all I know
12 about it.

13 Q. Did Mr. Brewer ever tell you he had gotten any
14 such award?

15 A. No.

16 Q. Did you ever hear that Mr. Rugh ever got any
17 commendations or awards or cash bonuses, anything like that
18 during the --

19 A. Not specifically, but I do know that Jack may
20 have been rated outstanding one or more times during these
21 years.

22 Q. It would have been Mr. Brewer primarily that

1 was doing the rating on him, wasn't it?

2 A. Mr. Brewer would have been the rating official,
3 yes.

4 Q. How about Mr. Mike Snyder, did you ever hear
5 that he got any awards or cash bonuses?

6 A. No, sir.

7 Q. Or commendations or anything during this
8 period?

9 A. No, sir.

10 Q. How about Carol Sloan?

11 A. I did not hear anything about her.

12 Q. Now, did you ever receive any contact with
13 anyone from a company called SCT, Systems and Computer
14 Technology, regarding INSLAW?

15 A. I don't recollect.

16 Q. Do you ever recall hearing that Mr. Brewer or
17 Mr. Rugh ever received any contact or had any contact with
18 anybody from that company?

19 A. I don't recollect.

20 Q. Did you ever have any contact with any person
21 from PRC, Planning Research Corporation, about INSLAW?

22 A. I don't recall.

Sparco

68021

1 was doing the rating on him, wasn't it?

2 A. Mr. Brewer would have been the rating official,
3 yes.

4 Q. How about Mr. Mike Snyder, did you ever hear
5 that he got any awards or cash bonuses?

6 A. No, sir.

7 Q. Or commendations or anything during this
8 period?

9 A. No, sir.

10 Q. How about Carol Sloan?

11 A. I did not hear anything about her.

12 Q. Now, did you ever receive any contact with
13 anyone from a company called SCT, Systems and Computer
14 Technology, regarding INSLAW?

15 A. I don't recollect.

16 Q. Do you ever recall hearing that Mr. Brewer or
17 Mr. Rugh ever received any contact or had any contact with
18 anybody from that company?

19 A. I don't recollect.

20 Q. Did you ever have any contact with any person
21 from PRC, Planning Research Corporation, about INSLAW?

22 A. I don't recall.

1 Q. Do you think you may have?

2 A. As I mentioned earlier, I received a call, I
3 believe I testified, from an individual from outside the
4 government. I am not excluding --

5 Q. All right.

6 A. -- anybody, any organization from being the
7 source.

8 Q. Excluding that person, and I know you can't
9 recall now what organization, if any, that person was from,
10 but excluding that person who contacted you, do you have any
11 other recollection of any contact either with anybody from
12 Systems and Computer Technology, or anybody from Planning
13 Research Corporation about INSLAW?

14 A. I am familiar with the second company by name,
15 and I have dealt with them in the past with another --
16 within other agencies, but I don't recall.

17 Q. Do you ever recall any contact with a man by
18 the name of Bruce Adams, I believe he is from California,
19 about INSLAW.

20 A. Unless he is the reporter or the other
21 individual, I don't -- the name does not ring a bell, let's
22 put it that way.

1 MR. KELLOGG: Mr. Videnieks, that is all the
2 questions that I have got.

3 MS. SPOONER: I have no questions.

4 (Check)
5 (Whereupon, the deposition was concluded at
6 5:08 p.m.)

ACKNOWLEDGEMENT OF DEPONENT

I, Peter Videnieks, hereby acknowledge that I have read and examined the foregoing pages of my deposition and that:

(Check appropriate box):

- () the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.
- () except for the changes noted in the attached Errata Sheet, the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.

Date

Signature

Subscribed to and sworn
before me this ____ day
of _____, 19__.

Notary Public in and for the State of _____.
My commission expires _____.

NON CONFIDENTIAL
VERSION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re

INSLAW, INC.,

Debtor.

INSLAW, INC.,

Plaintiff,

v.

UNITED STATES OF AMERICA
AND THE UNITED STATES
DEPARTMENT OF JUSTICE,

Defendants.

Case No. 85-00070
(Chapter 11)

NON CONFIDENTIAL
VERSION

Adversary Proceeding
No. 86-0069

~~IN CAMERA
UNDER SEAL
NOT PUBLIC~~

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Counts I, II and III of the Complaint)

TABLE OF CONTENTS

PAGE

INTRODUCTION	6
FINDINGS OF FACT	7
I. THE NATURE OF INSLAW'S BUSINESS AND ITS DEVELOPMENT OF PROMIS	7
A. ORIGINS OF INSLAW	7
B. FORMATION OF INSLAW AS A "FOR-PROFIT" CORPORATION AND THE DEVELOPMENT OF ITS PROPRIETARY ENHANCEMENTS	13
C. THE NATURE OF THE PROPRIETARY ENHANCEMENTS	17
1. Data Base Adjustment	18
2. Batch Update	21
3. The 32-Bit Architecture VAX Version Of PROMIS	21

TABLE OF CONTENTS

PAGE

4. Additional Discrete PROMIS Enhancements	24
II. INSLAW HAS CREATED USING PRIVATE FUNDS AN ENHANCED VERSION OF PROMIS THAT IS PROPRIETARY TO INSLAW	27
A. INSLAW'S ACCOUNTING SYSTEM DEMONSTRATES THAT INSLAW'S CLAIMED CHANGES AND ENHANCEMENTS WERE CREATED USING PRIVATE FUNDS	27
B. INSLAW HAS DEMONSTRATED THAT THE THREE MAJOR ENHANCEMENTS, THE DATA BASE ADJUSTMENT SUBSYSTEM, THE BATCH UPDATE SUBSYSTEM AND THE 32-BIT ARCHITECTURE VAX VERSION OF PROMIS, WERE CREATED USING PRIVATE FUNDS AND ARE PROPRIETARY TO INSLAW	35
C. INSLAW HAS DEMONSTRATED THE CREATION OF NUMEROUS INDIVIDUAL PROPRIETARY CHANGES AND ENHANCEMENTS TO PROMIS USING PRIVATE FUNDS	40
III. C. MADISON BREWER'S RELATIONSHIP TO INSLAW AND THE ORIGINS OF HIS BIAS AND LACK OF IMPARTIALITY TOWARD INSLAW	49
A. BREWER'S FIRING BY HAMILTON	49
IV. DOJ'S DECISION TO AUTOMATE U.S. ATTORNEY'S OFFICES WITH PROMIS AND TO HIRE BREWER AS PROMIS PROJECT MANAGER	56
A. NATURE OF DOJ'S CASE-TRACKING PROBLEM	56
B. INSLAW'S RECOMMENDATION TO USE MICRO-COMPUTERS RATHER THAN WORD PROCESSORS -- IN THE EXECUTIVE OFFICE RFP	59
C. DOJ'S HIRING OF BREWER AS PROMIS PROJECT MANAGER	61
D. BREWER'S ORGANIZATION OF DOJ'S PROMIS PROJECT TEAM	65
V. INSLAW GIVES DOJ NOTICE OF ITS OWNERSHIP OF AND PROPRIETARY RIGHTS TO ENHANCED PROMIS	69

TABLE OF CONTENTS

PAGE

A.	INSLAW GIVES NOTICE OF ITS PROPRIETARY CLAIMS	69
B.	DOJ'S CONFUSION OVER DATA RIGHTS	72
C.	NATURE AND TERMS OF THE PROMIS CONTRACT	77
VI.	BREWER'S STRATEGY FOR THE RUINATION OF INSLAW	80
A.	BREWER INFORMS HIS EOUSA/PROMIS PROJECT TEAM ABOUT HIS OPINIONS OF HAMILTON	80
B.	INSLAW'S INITIAL PROBLEMS WITH DOJ	82
1.	INSLAW's Decision To Market Enhanced PROMIS And Brewer's Response To These Plans	82
2.	Morris' Recusal Of Brewer On The Proprietary Enhancements Issue	89
3.	Brewer's Continued Involvement In DOJ's Consideration Of The Proprietary Enhancement Issue	92
4.	Brewer's Strategy For The Ruination Of INSLAW	95
C.	BREWER'S RENEWAL OF THE PROPRIETARY ENHANCEMENTS ISSUE AND TERMINATION OF ADVANCE PAYMENTS	101
VII.	BREWER'S USE OF MODIFICATION 12 "TO GET INSLAW'S GOODS"	109
A.	NEGOTIATION OF MODIFICATION 12	109
B.	BREWER, RUGH AND VIDENIEKS STYMIE INSLAW'S EFFORTS TO SUBSTANTIATE PROPRIETARY ENHANCEMENTS	117
VIII.	DOJ'S COMMITMENT TO CONSIDER REPLACING WORD PROCESSING MACHINES WITH MICROCOMPUTERS; DOJ'S DECISION INSTEAD TO ATTEMPT TO TERMINATE THE WORD PROCESSING PORTION FOR DEFAULT AND ITS ULTIMATE DECISION TO TERMINATE "FOR CONVENIENCE"	124

IX.	THE EFFORTS OF ELLIOT RICHARDSON AND OTHERS TO OBTAIN AN INDEPENDENT AND IMPARTIAL PROCESS FOR CONSIDERATION OF INSLAW'S COMPLAINT. . . .	130
A.	RICHARDSON MEETS WITH ASSISTANT ATTORNEYS GENERAL FOR ADMINISTRATION LIOTTA AND WALLACE IN AN ATTEMPT TO RECEIVE UNBIASED CONSIDERATION OF INSLAW'S COMPLAINTS	130
B.	AT JENSEN'S SUGGESTION, RICHARDSON AND OTHERS ATTEMPT TO RESOLVE THE DOJ BIAS WITH ASSOCIATE DEPUTY ATTORNEY GENERAL JAY STEPHENS	132
C.	INSLAW'S "LAST DITCH EFFORT" TO OBTAIN FROM JENSEN AN INDEPENDENT CONSIDERATION AND INVESTIGATION OF DOJ'S BIAS AGAINST INSLAW	135
X.	JENSEN'S BIASED ATTITUDE AGAINST INSLAW AND HIS INDIFFERENCE TO INSLAW'S REPEATED COMPLAINTS OF MISCONDUCT BY OTHER DOJ OFFICIALS.	138
A.	DEPUTY ATTORNEY GENERAL D. LOWELL JENSEN HAD A PREVIOUSLY DEVELOPED NEGATIVE ATTITUDE ABOUT PROMIS AND INSLAW	138
B.	JENSEN'S CLOSE INVOLVEMENT IN THE PROMIS CONTRACT AS RANKING DOJ OFFICIAL ON THE PROMIS OVERSIGHT COMMITTEE AND IMMEDIATE ORGANIZATIONAL SUPERIOR OF THE EXECUTIVE OFFICE DURING THE PERIOD OF BREWER'S MISCONDUCT AGAINST INSLAW	139
C.	DURING THE PERIOD OF THE AUTOMATIC STAY, JENSEN WAS REPEATEDLY MADE AWARE OF INSLAW'S COMPLAINTS ABOUT BREWER BUT TOOK NO CORRECTIVE ACTION.	142
XI.	DOJ'S FAILURE TO INVESTIGATE AND REMEDY INSLAW'S CLAIMS OF BIAS PRIOR TO THE BANKRUPTCY	145
XII.	DOJ'S UNLAWFUL AND IMPROPER CONDUCT CONTINUES UNABATED THROUGHOUT THE PERIOD OF BANKRUPTCY.	153
XIII.	DOJ'S BAD FAITH NEGOTIATIONS AND OTHER IMPROPER CONDUCT DURING THE PERIOD OF BANKRUPTCY.	158

TABLE OF CONTENTS

PAGE

A.	DOJ'S CONTINUED IMPROPER IMPLEMENTATION AND USE OF PROMIS SOFTWARE	158
B.	THE EFFECTS OF BIAS ON THE 1985 NEGOTIATIONS.	161
XIV.	DOJ'S CONTINUED FAILURE TO INVESTIGATE CLAIMS OF BIAS DURING THE PERIOD OF BANKRUPTCY.	165
	CONCLUSIONS OF LAW	178
	JURISDICTION AND VENUE	178
I.	INSLAW'S PROPRIETARY ENHANCEMENTS ARE ENTITLED TO PROTECTION AS TRADE SECRETS	179
II.	DOJ UNLAWFULLY USED INSLAW'S PROPRIETARY TRADE SECRET ENHANCEMENTS IN VIOLATION OF THE AUTOMATIC STAY	182
III.	DOJ'S FRAUD IN INDUCING INSLAW TO ENTER MODIFICATION 12, THE EFFECTS OF WHICH HAVE NOT BEEN CURED BY DOJ, CONSTITUTES A FURTHER VIOLATION OF THE AUTOMATIC STAY	204
IV.	DOJ'S FAILURE TO CURE THE CONTINUING EFFECTS OF BIAS AGAINST INSLAW FURTHER VIOLATES THE AUTOMATIC STAY	208
V.	INSLAW IS ENTITLED TO PERMANENT INJUNCTIVE RELIEF	210
VI.	INSLAW IS FURTHER ENTITLED TO ITS COSTS AND ATTORNEYS' FEES	215

INTRODUCTION

Those claims for relief as set forth in Counts I, II and III of the Complaint herein, as modified by this Court's Order dated July 20, 1987, having come before this Court for trial during the period July 20 through August 5, 1987; the parties hereto having submitted extensive evidence, legal briefs, argument and proposed findings of fact and conclusions of law; and this Court having very carefully taken into consideration all of these submissions and having also thoroughly weighed all of the evidence, and having determined that the relevant legal principles involving non-bankruptcy law are clear, simple, basically undisputed and not requiring the expertise of any specialized agency, makes the following findings of fact and conclusions of law.

These findings of fact are based upon a very careful analysis and weighing of all the evidence presented, and after consideration and review of the proposed findings, and replies thereto, submitted by each party. In making these findings, the Court heavily relies upon its very close observation of the witnesses who testified in this matter, and the credibility of those witnesses based upon the Court's close observation of their demeanor, expressions and the inherent probability or improbability of their testimony in light of the documentary evidence and other known facts. The Court also finds that all the facts hereinafter found have been established by at least clear and convincing evidence. In some instances the evidence is overwhelming or even irrefutable. Further reference is made

to the statements made from the bench in open court on September 28, 1987, which are incorporated herein.

FINDINGS OF FACT

I. THE NATURE OF INSLAW'S BUSINESS AND ITS DEVELOPMENT OF PROMIS

A. ORIGINS OF INSLAW

1. Plaintiff INSLAW, Inc. ("INSLAW"), a debtor-in-possession currently undergoing reorganization under Chapter 11 of the Bankruptcy Code, is a corporation organized and operated under the laws of the State of Delaware, with its principal place of business in the District of Columbia. It is in the business of designing, manufacturing, marketing and maintaining software systems for use on computers. (Answer ¶1)^{1/}

2. In 1973, William Hamilton and Dean Merrill founded the Institute for Law and Social Research ("Institute") as a not-for-profit corporation. (Hamilton, T. 85; Merrill, T. 747-748) Thereafter, the Institute focused on the development of computer software case management programs for the automation of law enforcement offices, including a primitive version of the computer software which eventually was made available to DOJ and is at issue in this proceeding. (Answer ¶10) During the 1970s, the Institute obtained a number of cost-plus grants and cost-plus contracts largely from the

^{1/} Citation to the record will be indicated as follows: Answer ¶ ; Plaintiff's Exhibit ("PX") ; Defendants' Exhibit ("DX"); trial testimony (e.g., Hamilton, T.); and deposition testimony (e.g., PX [Name] at p.).

Law Enforcement Assistance Administration ("LEAA") of DOJ, for the development and implementation of such software automation programs.^{2/} (Hamilton, T. 86; Merrill, T. 752)

3. In the 1970s, the Institute developed a version of a software product, known as the Prosecutor's Management Information System ("old PROMIS"), for automating certain law enforcement record keeping and case-monitoring activities (Answer ¶10). With the exception of the Superior Court Division of the U.S. Attorney's Office for the District of Columbia, this software system was focused on assisting state and local prosecutors. (Hamilton, T. 113; Merrill, T. 752)

Accordingly, the contract between the Executive Office of U.S. Attorneys ("EOUSA") and Inslaw in March 1982, which is the subject of this litigation, was the first national effort to implement PROMIS in U.S. Attorney's offices. (Hamilton, T. 113) However in 1979, the Institute conducted an EOUSA sponsored feasibility study to determine the best approach for

^{2/} The Institute's grants and contracts with LEAA were often competitively awarded, and the grants were administered by LEAA in the same fashion as were the contracts. (Hamilton, T. 86) This method of contracting was largely indistinguishable from the Executive Office contract which INSLAW and DOJ entered into in March 1982. (Hamilton, T. 89) Many of the same DOJ and LEAA Audit staff personnel who worked on the grants and contracts for the Institute also played the same role on the Executive Office contract with INSLAW and there was very little, if any, difference in the auditing procedures used. (Hamilton, T. 89-90; Schacht, T. 2450) Notwithstanding the testimony of Robert Whitely for DOJ, the record is overwhelmingly consistent with INSLAW's assertion that no differences existed in the contract/grant administration for INSLAW as compared to the contract/grant administration for the Institute. (Schacht, T. 2480-2481)

improving the case management and information systems used by the United States Attorneys. The study identified a need for more information about the United States Attorneys' activities. (DX 8, Appendix A, p. 3; Hamilton, T. 244) That feasibility study and a "pilot project" (see F.F. ¶ 8, below) had demonstrated the workability of the nationwide effort.

4. . . Originally, old PROMIS was a limited function software package that permitted rudimentary case tracking functions using computer hardware. (Merrill, T. 759; PX 9, 21) It was a "batch" software system, i.e., limited in hardware applications and user accessibility, which was redesigned and reprogrammed in 1976 to become an "on-line real time" system, a change that permitted greatly expanded usage of minicomputers as well as instantaneous updating and retrieval of case files. (PX 21) PROMIS developed and was improved over the entire decade of the 1970s. The software relevant to this adversary proceeding are the Executive Office of U.S. Attorneys ("EOUSA") pilot version (which was in the public domain in 1982; see F.F. ¶ 8 below) and the enhancements financed by INSLAW's contract with DOJ's Bureau of Justice Statistics ("BJS"); see F.F. ¶ 11 below.

5. Old PROMIS, as it existed in or about 1982, was designed to provide the user with a basic system of storing, managing and retrieving certain standard types of information which would be applicable to every user. (PX 8; PX 21) However, and unlike most other information management software packages, Old PROMIS further permitted each individual user to

tailor the software to store additional types of data to serve the user's unique needs. (PX 21) Moreover, Old PROMIS permitted each user to design the look and the contents of the video display screens used to enter and retrieve data, and the look and contents of hard copy paper reports. (PX 21) Old PROMIS was therefore designed to offer great flexibility to a wide variety of users by permitting the software system to adapt to the recordkeeping needs of each user rather than vice versa. (PX 21)

6. Old PROMIS was created using the computer Common Business Oriented Language, or ("COBOL"), in a version written by the American National Standards Institute. (PX 21) The purpose of writing PROMIS in such a standard language was to permit the PROMIS software to be easily converted or "ported" to run on numerous brands of computers which are otherwise incompatible. (PX 21)

7. Because the Institute designed Old PROMIS to be inherently versatile, adaptable and portable, Old PROMIS met with great user acceptance and success in those jurisdictions and offices that had installed PROMIS. (Hamilton, T. 106) More particularly, LEAA designated PROMIS as an exemplary project and encouraged state and local governments to consider implementing PROMIS. (Hamilton, T. 106; Gizzarelli, T. 468)

8. The EOUSA decided to test the concepts proposed in the feasibility study by implementing a "pilot project" beginning in October of 1979. (Hamilton, T. 86) In essence, this pilot program involved the extension of the state/local

criminal version of old PROMIS to encompass civil litigation and legal process debt collection functions and the installation of the extended system on government-furnished minicomputers in two U.S. Attorneys offices: the District of New Jersey and the District of Southern California (San Diego). (PX 9) Due to the Government's delay in procuring mini-computers, both of these sites initially "time-shared" the Institute's computers using remote data entry terminals and printers. (PX 9) In the summer of 1981, after a year or more of time-sharing, PROMIS was installed on each District's "Prime" brand of mini-computer. (PX 9)

9. An adjunct of the Institute's pilot program was the development of PROMIS-like case control functions on Lanier word processing equipment in two smaller U.S. Attorneys offices in 1981 - the Southern District of West Virginia and the District of Vermont. (DX 8, Appendix A, pp. 3-4; Hamilton, T. 245; PX 9)

10. The pilot project was evaluated by an independent contractor and determined to be the most cost effective operational alternative. Thus, DOJ made the decision to install the system, as envisioned by the pilot project, on a nationwide basis in the remaining 89 offices. (PX 8 [Bates Stamp 022708]; DX 8, Appendix A, p. 5)^{3/}

3/ Of the 94 active United States Attorneys' offices, four were serviced as part of the pilot project and one (the District of Columbia) was handled as a separate project. (DX 8, Appendix A, p. 5)

11. In 1979, LEAA awarded a three-year-cost-plus contract to the Institute for PROMIS upkeep and upgrade services. (PX 21) In 1981, when LEAA was liquidated, the three year PROMIS support contract was assigned to DOJ's newly created Bureau of Justice Statistics ("BJS") which lacked funds for the final year of the contract. (PX 21; Hamilton, T. 256-258) EOUSA, through an interagency transfer of funds, allocated over \$500,000 to this contract in order to finance the development of certain enhancements requested by EOUSA. (PX 21) The enhancements funded by the EOUSA through the BJS contract were added to the public domain software for use in the 1982 implementation contract.

12. The BJS contract, in essence, contained a laundry, or "wish" list of enhancements DOJ wanted to be made to Old PROMIS. (Hamilton, T. 257-258; Dero, T. 2460-2462) DOJ chose to determine the priority for the enhancements it desired and INSLAW agreed to go forward to see how much could be done on a cost-plus basis. (Hamilton, T. 258; Dero, T. 2460-2462)

INSLAW claims that: (1) Because the Executive Office refused to transfer \$125,000 to the BJS contract needed to complete the third year of the contract, INSLAW agreed to complete the five enhancements as part of the 1982 Executive Office contract without additional compensation for development costs. (Hamilton, T. 114) (2) INSLAW completed five enhancements under the BJS contract but never received from DOJ full reimbursement of development costs for these enhancements. (Hamilton, T. 257-258) (3) Notwithstanding that DOJ failed to

Pay INSLAW's actual full costs for development of the five BJS enhancements, INSLAW does not claim any of them among its privately-financed proprietary enhancements. (Hamilton, T. 114)

In response, DOJ contends as follows: (1) The implication that DOJ somehow refused to pay INSLAW money owed to it for development of the BJS enhancements is untrue. (2) As it was required to do so by contract, INSLAW notified DOJ of a potential cost overrun of \$125,000 on the BJS contract. (3) DOJ, as government agencies are required to do in cost-type contracts, considered whether it wanted to endure the cost overrun or avoid it by taking some action such as reducing the statement of work. (4) When it refused to agree to approve the additional work, INSLAW agreed to perform the work as part of the 1982 implementation contract at no additional cost to the government (Hamilton, T. 259; Brewer, T. 1640). (5) That agreement recognized that INSLAW believed that implementation costs would be reduced and that no additional funding would be necessary. Modification 6 to the 1982 implementation contract specifies the enhancements to be made and states that the \$110,000 required for those enhancements be taken from other contract tasks. (PX 17)

It is not necessary for this Court to resolve this \$125,000 dispute between the parties at this time.

B. FORMATION OF INSLAW AS A "FOR-PROFIT" CORPORATION AND THE DEVELOPMENT OF ITS PROPRIETARY ENHANCEMENTS

13. In 1980, the Institute received notice that funding for Old PROMIS through LEAA would be extinguished

beginning in May 1981. (Hamilton, T. 86; Merrill, T. 759) In order to maintain the existing PROMIS user installations, as well as to expand the use of Old PROMIS, the Institute determined to become a for-profit corporation that could market its expertise and software to current and potential PROMIS users. (Hamilton, T. 86; Merrill, T. 759) In particular, this market plan focused upon local district attorney's offices which previously had received free service from the Institute at the expense of LEAA. (Hamilton, T. 86)

14. In connection with this market plan, INSLAW retained Roderick Hills, Esquire for advice on how to proceed with implementing the plan. (Hamilton, T. 86) As part of this assignment, Hills and Hamilton apprised Charles B. Renfrew, Deputy Attorney General of DOJ, of INSLAW's plans to invest private funds for enhancements to PROMIS for creation of proprietary, fee-generating products which would be sold to anyone having an interest in such products. (Hamilton, T. 87-88, 264-265; Merrill, T. 763-775) In addition, Hills informed Renfrew that INSLAW intended to make enhancements to the Old PROMIS software and to assert a proprietary interest in the enhancements financed through private funds. (Hamilton, T. 100; Merrill, T. 763-764) During this discussion, Hills asked Renfrew if DOJ would have any problem with INSLAW's plans. (Hamilton, T. 88, 264-265) Renfrew responded that DOJ had no plans to continue to finance the upkeep and upgrade of PROMIS and DOJ welcomed, and had no problems whatsoever with, INSLAW's plans in this regard. (Hamilton, T. 88)

15. In January 1981, INSLAW was organized and purchased the assets of the Institute. (Answer #10; Hamilton, T. 84) Since its inception in 1981, William A. Hamilton has been the President and Chairman of the Board of INSLAW. (Hamilton, T. 83)

16. In an effort to obtain the private funding necessary for the survival of INSLAW and PROMIS, in May 1981, INSLAW began selling its software upkeep and upgrade services to its existing user base pursuant to annual flat fee contracts. (Hamilton, T. 99; Merrill, T. 816) These funds were combined with investments of the company's equity capital and contract monies from private companies in an effort to develop enhancements to Old PROMIS. (Hamilton, T. 100-101, 104)

17. INSLAW had two motives in going forward with privately financed enhancements of PROMIS. (Hamilton, T. 109) First, the founders of INSLAW had invested a number of years in the development of PROMIS and did not want to see that effort wasted. (Hamilton, T. 109) Second, INSLAW wanted to make a profit from its efforts to enhance the PROMIS software. (Hamilton, T. 109)

18. INSLAW also entered into a number of contracts with individual private clients to create new and important functional enhancements to PROMIS. (Hamilton, T. 102-104) These enhancements were then made available to other PROMIS users on a license basis; input and experience developed from this effort was used by INSLAW to further modify and improve

the Old PROMIS system over and above the system created under the LEAA funding. (Merrill, T. 759-761)

19. As INSLAW's expert testified from his twenty-five years of experience in the software industry, it is common within the software industry for a private corporation (i) to take public domain software created using public funds, (ii) then to enhance the public domain software using private funds and (iii) finally to market the resulting product as a proprietarily enhanced version of the software. (DeLutis, T. 1299-1300; PX 233)

20. INSLAW also marketed enhanced PROMIS successfully to additional federal government offices outside of the Department of Justice, non-federal government offices, and private non-government clients. (Hamilton, T. 98-99) These additional users permitted INSLAW to further enhance PROMIS through greater revenues, additional user input and private funding for particular changes. (Hamilton, T. 98-99; Merrill, T. 759, 761)

21. Significantly, INSLAW also began to change the structure of PROMIS by extending the basic concept to other uses. (Hamilton, T. 98-99) INSLAW thus created and began to market new PROMIS-based packages such as JAILTRAC for correctional institutions, DOCKETRAC for courts, MODULAW for insurance companies and private law firms, and CJIS for county-wide justice administration. (Holton, T. 1125; Merrill, T. 816-817) While each of these other applications contains some specific coding that relates to the particular user needs,

PROMIS and these derivative application packages share much of the same COBOL software code. (Holton, T. 1125) Thus, generic enhancements to any of the packages benefit all of these applications. (Merrill, T. 816-817, 819)

22. Through its experience with PROMIS users, INSLAW further modified PROMIS pursuant to the suggestions of the in-house staff of INSLAW. (Merrill, T. 761) A number of enhancements were funded through INSLAW's profits and research and development costs, which became part of the Enhanced PROMIS -- "PROMIS '82" -- that INSLAW began to market aggressively to new users beginning in the Fall of 1982. (Hamilton, T. 104-105; Merrill, T. 759)

C. THE NATURE OF THE PROPRIETARY ENHANCEMENTS

23. In essence, INSLAW made two types of enhancements to PROMIS: first, changes "sewn inside" the existing old PROMIS code which permit more efficient, user-friendly and less defect-prone operation of the software; and second, changes "hooked-on" to the PROMIS code which add new functionality. (Hamilton, T. 102)

24. Enhanced PROMIS consists of a number of subsystems, i.e., packages that are themselves comprised of a number of programs or modules. (Holton, T. 1122-1124; PX 225b) Two of these subsystems, the Data Base Adjustment subsystem and the Batch Update subsystem, have been demonstrated by INSLAW to have been developed using private funds, are proprietary to INSLAW and were not deliverable under

the EOUSA contract. (Hamilton, T. 125, 2571-2575; See F.F. 1121-73 below) The Data Base Adjustment and Batch Update subsystems are "hook-on" systems that are independent of the remainder of PROMIS. (Holton, T. 1123-24) Although they perform additional useful and desirable functions within PROMIS, they are not themselves required to make PROMIS function, and they could have been removed from PROMIS without preventing the operation of the remaining PROMIS software system. (Holton, T. 1123-1124)

1. Data Base Adjustment

25. The Data Base Adjustment subsystem consists of nine programs. (Holton, T. 1126; Hamilton, T. 2589) Data Base Adjustment is used to modify the structure of a PROMIS data base that has already been in use, without causing any loss of data that would ordinarily preclude structural modifications to existing databases. (Holton, T. 1126-27) For example, if the information in a phone book is considered as a record in a data base, the existing structure of that record would include the name, address and telephone number for each listing. (Holton, T. 1126) If one then wished to expand the structure of that record by including zip codes, the Data Base Adjustment subsystem would be useful in altering the structure of the existing phone book data base to permit entry of zip codes for both new and old listings. (Holton, T. 1126-27)

26. Restructuring of a database permits the user to accommodate needs for additional information, work flow pattern

changes, changes in office organizational structure, and a greater user sophistication in use of office automation. (Hamilton, T. 2577-2578) It is INSLAW's experience that PROMIS users typically will request retailoring perhaps as often as every 12-18 months, which will require the use of the Data Base Adjustment subsystem. (Holton, T. 1120-21; Hamilton, T. 2576-2578) DOJ may be -- or may not be -- atypical: Mr. Rugh testified that the United States Attorneys have never needed to restructure their PROMIS data bases. (Rugh, T. 2627-28) However, this Court has found Mr. Rugh's testimony to be unbelievable. See F.F. ¶ 39g below. It is entirely possible that individual U.S. Attorneys' offices have wanted to restructure their PROMIS data bases and have been prevented from doing so by EOUSA. (See F.F. ¶ 40 below)

27. Although specific-need programs for specific restructuring of particular data bases could be created, the advantage of the PROMIS Data Base Adjustment subsystem is that it is a generic, reusable package that requires little coding work by the programmer for each new adjustment. (Holton, T. 1126-27) Without Data Base Adjustment, users who desired to improve the structure of their data base would be required to improve the structure of their data base would be required for each specific need to engage in weeks, perhaps months, of hard coding, testing and debugging of a program that would alter only one specific existing data base to one specific new data base structure. (Holton, T. 1127)

28. Although there were two programs that comprised an earlier version of the Data Base Adjustment package, they

were not the same as any of the programs that comprise the nine Data Base Adjustment subsystem programs that were provided to the Department of Justice. (Holton, T. 1172-75, 2533, 2563)

Unlike the Data Base Adjustment subsystem provided to DOJ by INSLAW in 1985, the two early programs did not generate code and did no comparison of the old and new database designs. (Holton, T. 1173-74) The nine-program Data Base Adjustment subsystem performs numerous additional functions not present in the early version of Data Base Adjustment. (Holton, T. 1173-74)

29. The two earlier programs are not in or among the nine-program Data Base Adjustment subsystem that INSLAW has claimed as proprietary in this litigation. (Holton, T. 1174-75; Hamilton, T. 125)

30. The nine programs in the Data Base Adjustment subsystem are in the possession and control of the government. (Gagliardi, T. 2069; Hamilton, T. 2607-2609, 2589; Holton, T. 2510; DX 212 [Holton] at pp. 210-212; see, however, Holton, T. 2530)

31. Data Base Adjustment is an extremely useful tool for PROMIS users, and is a very valuable enhancement to PROMIS. (Delutis, T. 1281-1282; Holton, T. 1124, 1127; Hamilton, T. 2576-2578) Even Defendant's expert conceded that Data Base Adjustment is an enhancement to PROMIS, and believed that any commercially viable software program should have the capability of adjusting the data base. (Gagliardi, T. 2073-2074) Data Base Adjustment was not required to be

delivered under the EOUSA (1982) Contract. (Hamilton, T. 125,
2607-2608; Holton, T. 1123)

2. Batch Update

32. The Batch Update subsystem permits a user to add computerized information to an existing database structure in batches (i.e., without requiring the tedious input of information one record at a time through keyboards at video terminals), in a cost-effective manner, and without incurring the concomitant increased risk of introducing human data entry errors into the database. (Holton, T. 1128-1129; Delutis, T. 1280-1281; Hamilton, T. 2572-2574)

33. Batch Update is a very significant feature of PROMIS that, according to defendant's expert, must be present in order even to begin to enter the marketplace. (Gagliardi, T. 2044-2045) Batch Update is a useful tool for PROMIS users and is a valuable enhancement to PROMIS. (Delutis, T. 1280-81) Batch Update was not required to be delivered under the EOUSA (1982) Contract. (Hamilton, T. 2571-2575; Holton, T. 1123)

3. The 32-Bit Architecture VAX Version Of PROMIS

34. INSLAW also created between June and September of 1981, using private funds, a third major enhancement to PROMIS, which was the redesign and porting of the PROMIS software to run on the 32-bit architecture VAX minicomputer manufactured by Digital Equipment Corporation. (Holton, T. 1132) A software "port" is the process of converting an existing software

package to enable it to run on different brands and models of computers. (Holton, T. 1132) The earlier versions of PROMIS ran on other Digital Equipment Corporation computers, known as PDP 11/70, as well as on computers sold by IBM, Wang, Honeywell and Burroughs. (Holton, T. 1133; Delutis, T. 1273-1274)

35. In 1981, INSLAW noted that Digital Equipment Corporation was replacing its 16-bit architecture PDP line of computers with the newer, state-of-the-art VAX line. (Holton, T. 1132) Because the VAX computers offered significant technological advantages over the PDP line, including 32-bit architecture as opposed to 16-bit architecture, increased work-in-storage space and faster input/output for processing of information -- differences as significant as the difference between a propeller-driven airplane and a jet -- INSLAW made a strategic decision to stay abreast of the technology by porting the entire PROMIS system from the 16-bit PDP to the 32-bit VAX "environment." (Holton, T. 1131-33; Delutis, T. 1274-1280)

36. The development of a version of PROMIS to run on VAX minicomputers was a very valuable enhancement to PROMIS in terms both of INSLAW's need to stay abreast of the market and of INSLAW's customers' need and desire for faster, more capacious products. (Delutis, T. 1274-1280)

37. The VAX version of PROMIS subsequently was used by INSLAW to provide time-sharing facilities to ten United States Attorneys' Offices, pending selection and installation by the government of on-site computer equipment. (Holton, T. 1254)

38. Whereas the "base" or "master" version of PROMIS until 1980 ran on 16-bit architecture PDP 11/70 computers, the 32-bit VAX version in about 1981 became the base or master version of PROMIS that was then used to do further development and maintenance work to PROMIS. (Holton, T. 1133-34)

39. Although the 1982 contract did not prescribe the manner in which the contractor was to create the Prime version of PROMIS to be delivered to the government, and indeed DOJ had not yet chosen the Prime computer hardware until long after the contract had been entered into, INSLAW in fact used the VAX version of PROMIS to create the version of PROMIS that ran on the Prime computers selected by the government. (Holton, T. 1250-51; Hamilton, T. 173) INSLAW used the VAX version rather than the earlier Prime version developed by INSLAW during the Executive Office "pilot project" contract, because the differences between the new COBOL compiler on the Prime computers selected by the government and on the VAX were less significant than the differences between the COBOL compilers in the new and old models of the government-furnished Prime minicomputers. (Holton, T. 1250)

40. Both the major enhancements as well as the individual changes and enhancements to PROMIS are licensed by INSLAW to its current users. (Merrill, T. 760-761; Hamilton, T. 173) INSLAW has had requests from individual United States Attorney's Offices to obtain the latest additional PROMIS enhancements, including a request from the United States Attorney's Office for the Southern District of New York which

wishes to obtain from INSLAW its most up-to-date enhancements to PROMIS created by INSLAW since the end of the Executive Office contract in March 1985. (Merrill, T. 761-762)

4. Additional Discrete PROMIS Enhancements

41. A number of the enhancements to PROMIS improved the Old PROMIS systems by making the software more efficient and user-friendly, and adding new functionality. (Hamilton, T. 102-103) Certain enhancements, for example, provided information to the user to assist in operation of PROMIS or diagnosis of errors encountered in entering or retrieving data. (Holton, T. 1175, 1215-1219; Delutis, T. 1285) Other enhancements provided the user with the ability to perform tasks more quickly, either by structuring the on-screen processes to perform additional functions or by streamlining the amount of code so as to allow the program to run faster. (Hamilton, T. 102-103; Holton, T. 1215-1216, 1219; Delutis, T. 1285)

42. All of these enhancements became part of the enhanced PROMIS software that INSLAW sought to market to new users and to provide through maintenance updates to existing PROMIS users that had entered into maintenance contracts with INSLAW. (Holton, T. 1126-1134; Hamilton, T. 108-109)

43. These enhancements identified by INSLAW were created from private, non-federal funds expended by INSLAW for software enhancements from May of 1981 through March of 1985. (Ling, T. 1065-1066, 1073-1074, 1080; Gibson, T. 2245-2246,

wishes to obtain from INSLAW its most up-to-date enhancements to PROMIS created by INSLAW since the end of the Executive Office contract in March 1985. (Merrill, T. 761-762)

4. Additional Discrete PROMIS Enhancements

41. A number of the enhancements to PROMIS improved the Old PROMIS systems by making the software more efficient and user-friendly, and adding new functionality. (Hamilton, T. 102-103) Certain enhancements, for example, provided information to the user to assist in operation of PROMIS or diagnosis of errors encountered in entering or retrieving data. (Holton, T. 1175, 1215-1219; Delutis, T. 1285) Other enhancements provided the user with the ability to perform tasks more quickly, either by structuring the on-screen processes to perform additional functions or by streamlining the amount of code so as to allow the program to run faster. (Hamilton, T. 102-103; Holton, T. 1215-1216, 1219; Delutis, T. 1285)

42. All of these enhancements became part of the enhanced PROMIS software that INSLAW sought to market to new users and to provide through maintenance updates to existing PROMIS users that had entered into maintenance contracts with INSLAW. (Holton, T. 1126-1134; Hamilton, T. 108-109)

43. These enhancements identified by INSLAW were created from private, non-federal funds expended by INSLAW for software enhancements from May of 1981 through March of 1985. (Ling, T. 1065-1066, 1073-1074, 1080; Gibson, T. 2245-2246,

2251-2252) The total spent by INSLAW during this period for software enhancements of all kinds was more than \$8.3 million. This figure has been verified by an audit performed by DOJ's staff auditors. (Gibson, T. 2245-2246, 2251-2252) Although INSLAW's accounting system does not permit the identification with specificity of the cost of each particular enhancement, INSLAW had during that same time period approximately \$13 million in funds from private sources that were available and could have been used to perform these and other software enhancements. (Ling, T. 1071, 1074)

44. INSLAW took a number of steps to maintain the confidentiality of the software that was created after INSLAW came into being. (Hamilton, T. 105) First, INSLAW required all of its employees to sign confidentiality and non-disclosure agreements. (Hamilton, T. 105) Second, the enhancements to PROMIS were created under maintenance contracts and private contracts that expressly provided that all proprietary rights to all of the enhancements were held exclusively as the property of INSLAW. (Merrill, T. 762-763; Hamilton, T. 104; PX 236-236a)^{4/} Users were further subject to restrictions precluding disclosure or dissemination of these enhancements in

^{4/} Shortly after starting its privately-financed enhancements of PROMIS in May 1981, INSLAW discovered that the language of certain of its contracts did not adequately protect its proprietary rights. (Hamilton, T. 292-293) Several months after May 1981, this contract language was changed to offer INSLAW the protection that it desired. (Hamilton, T. 293) Moreover, because these people subscribed in the following year under a more restrictive contract under which all the enhancements had been commingled this problem was resolved. (Hamilton, T. 293)

2251-2252) The total spent by INSLAW during this period for software enhancements of all kinds was more than \$8.3 million. This figure has been verified by an audit performed by DOJ's staff auditors. (Gibson, T. 2245-2246, 2251-2252) Although INSLAW's accounting system does not permit the identification with specificity of the cost of each particular enhancement, INSLAW had during that same time period approximately \$13 million in funds from private sources that were available and could have been used to perform these and other software enhancements. (Ling, T. 1071, 1074)

44. INSLAW took a number of steps to maintain the confidentiality of the software that was created after INSLAW came into being. (Hamilton, T. 105) First, INSLAW required all of its employees to sign confidentiality and non-disclosure agreements. (Hamilton, T. 105) Second, the enhancements to PROMIS were created under maintenance contracts and private contracts that expressly provided that all proprietary rights to all of the enhancements were held exclusively as the property of INSLAW. (Merrill, T. 762-763; Hamilton, T. 104; PX 236-236a)^{4/} Users were further subject to restrictions precluding disclosure or dissemination of these enhancements in

^{4/} Shortly after starting its privately-financed enhancements of PROMIS in May 1981, INSLAW discovered that the language of certain of its contracts did not adequately protect its proprietary rights. (Hamilton, T. 292-293) Several months after May 1981, this contract language was changed to offer INSLAW the protection that it desired. (Hamilton, T. 293) Moreover, more restrictive contract under which all the enhancements had been commingled this problem was resolved. (Hamilton, T. 293)

the absence of a license from INSLAW. (Merrill, T. 762-763; Hamilton, T. 105; PX 236-236a) Finally, INSLAW copyrighted its software and documentation. (Hamilton, T. 105)

45. The PROMIS enhancements were determined by INSLAW to be privately financed and proprietary to INSLAW by analyzing the documentation of each enhancement that is contained in the source code of the programs themselves, the forms used by INSLAW to report and record software changes, and the timesheets of the employees who performed the programming work on each enhancement. (Holton, T. 1175-1177) The method used by INSLAW to track software enhancements and to account for employee time is wholly reasonable within the standards used throughout the industry, and is, in many respects, exceptionally good.^{5/} (Delutis, T. 1287-1288, 1297-1298) On the basis of the foregoing and the record as a whole, this Court finds that the enhancements that INSLAW developed either with private funds, or with a combination of private funds and

5/ Although this Court did not and need not rely upon the following comparison in reaching this finding, the Court takes notice that, at a hearing on November 3, 1987 concerning the claims of SG Systems, Inc. and SIR Corp. against United Press International, Inc., in Case No. 85-00257, employee timesheets used by those two computer software corporations were introduced into evidence and relied upon by this Court in its holding granting the full relief requested. Mr. Siok ("Si") H. Go is president of both corporations, has 20 years' experience in computer software, including 9 years' employment with Univac, and has implemented software systems for the New York Stock Exchange and Banker Ramo Corp. Comparison of the employee timesheet form used by Mr. Go's two corporations, for Mr. Go himself and his associate Mary Ann Huang (copy attached as Appendix A), with the employee timesheet form used by INSLAW (Appendix B) shows that the INSLAW form is an immeasurably superior tracking system in every respect.

under government contracts specifically permitting INSLAW to retain private rights, were not in the public domain but were INSLAW's private property.

II. INSLAW HAS CREATED USING PRIVATE FUNDS AN ENHANCED VERSION OF PROMIS THAT IS PROPRIETARY TO INSLAW

A. INSLAW'S ACCOUNTING SYSTEM DEMONSTRATES THAT INSLAW'S CLAIMED CHANGES AND ENHANCEMENTS WERE CREATED USING PRIVATE FUNDS

46. INSLAW's accounting system tracks costs relating to software development according to unique four-character charge codes. (Ling, T. 1054; Gibson, T. 2231) The first two characters of this charge code identify the project for which the work is being performed and to which the time is being charged; the second two characters identify a particular task within that overall project. (Gibson, T. 2231)

47. These charge codes are reflected in INSLAW's accounting system in time sheets used by INSLAW employees, expense reports and journal entries, which are then summarized in monthly project control reports for each charge code, as well as in INSLAW's general ledger. (Ling, T. 1054-1058; Gibson, T. 2231)

48. INSLAW has used continuously since its inception as a private corporation the same form of time sheet for its software programmers. (Ling, T. 1055-56; PX 227) Using this time sheet, INSLAW's software programmers track on a bi-weekly basis the number of hours spent working on a particular project and task by entering the appropriate four-character project code. (Ling, T. 1057; PX 227; Holton, T. 1139)

49. INSLAW programmers are informed at the beginning of a project of the appropriate four character charge code to be used on time sheets to charge work for that project. (Holton, T. 1139; DX 211 [Ling] at p. 70) At the end of the two-week pay period, the employee totals and checks the time sheet, signs it, and submits it for review to the director of that employee's division. (Ling, T. 1057-58; Holton, T. 1139) The employee's time is reviewed and approved by the division director, who must sign and date the time sheet. (Ling, T. 1057-58; Holton, T. 1139) Time charged to particular projects must also be approved by the project manager, who must initial the time sheet next to the charge code. (Ling, T. 1058) The time sheet is then submitted to the accounting department for review, payroll processing and entry into INSLAW's general ledger system. (Ling, T. 1058)

50. Any INSLAW employee who attempted intentionally to mischarge time to incorrect accounts would be severely reprimanded and could very easily be terminated. (Holton, T. 1140-41) Although DOJ witness James Mennino testified to the contrary, this Court has found his testimony to be absolutely incredible, totally unsubstantiated and obviously biased, as discussed in F.F. ¶ 312 below. It appears that Mennino was attempting to excuse his own excessive time spent on a project, on which he was in charge of one aspect, by complaining about the time spent by other persons responsible for other aspects of that project, even though he had no

knowledge concerning either what those other persons were doing or how long it should reasonably take them to do it.

51. INSLAW's time sheets are of the type commonly used in the software industry for recording time spent by computer programmers on software development. (Delutis, T. 1288-1291; Gagliardi, T. 2088)

52. For major enhancements that are assigned individual charge codes, INSLAW can track its labor costs relating directly to those particular enhancements. (Ling, T. 1080-81) For smaller enhancements that are not assigned separate charge codes, INSLAW's accounting system does not permit tracking the cost of each such enhancement. (Ling, T. 1080-81; DX 211 [Ling] at pp. 84-85)

53. Each programmer also was assigned an individual computer "account," i.e., a work space within the computer. (Holton 52-54) To "sign on" to the computer account, the programmer would use a code that would enable INSLAW to charge the programmer's computer time to a particular client, or to INSLAW itself. (DX 212 [Holton] at pp. 52-55; DX 211 [Ling] at p. 64)

54. However, tracking of and/or accounting by individual smaller enhancements is not done generally within the industry, and none of the witnesses called by either INSLAW or the government was aware of any software development company that maintained accounting records with that degree of detail. (Delutis, T. 1291-1292, 1306; Gagliardi, T. 2090-2092; DX 211 [Ling] at pp. 87-89; Ling, T. 1081) The testimony by DOJ

witnesses Gagliardi and Rugh, that even so INSLAW should have maintained such records (Gagliardi, T. 2083-85; Rugh, T. 1515-17), was obviously a product of their intense bias against INSLAW, which caused them to testify in whatever way they thought might defeat INSLAW's claims, without regard to the truth.

55. Although the government auditor, Alan Gibson, testified that he did not believe that INSLAW's records were sufficient to audit each of the changes and enhancements identified by INSLAW as privately funded (Gibson, T. 2114), Gibson admitted that he has no knowledge of records kept in the ordinary course of business by software developers, and has never performed any analysis of funding sources for software enhancements. (Gibson, T. 2229-2230) However good a government auditor Mr. Gibson may be, this is a specialized field in which Mr. Gibson has no expertise or competency.

56. Moreover, an accounting system that tracked software development costs by individual software changes would be unduly burdensome and expensive to set up and maintain, and would require computer memory capacity far exceeding the capabilities of even INSLAW's computers. (DX 211 [ling] at pp. 62-63, 87-88)

57. Because INSLAW's records are within the standards for recordkeeping within the industry, including time records and documentation concerning software maintenance, and indeed are exceptionally good, the Court considers INSLAW's records more than sufficient for the purposes of establishing the

existence of and funding for the enhancements and changes claimed as proprietary by INSLAW.

58. INSLAW has demonstrated that between May 1981 and March 1985, the period from which INSLAW began developing enhancements using private funding through the end of the 1982 EOUSA contract, INSLAW expended \$8,328,883, of private, non-federal funds for software development for private clients or in-house software development, exclusive of software development costs for the federal government. (PX 230; Ling, T. 1072-75; Hamilton, T. 400; Merrill, T. 815-816) The \$8,328,893 reflected in Plaintiff's Exhibit 230 includes but is not limited to solely the cost to INSLAW of creating those enhancements that were delivered to DOJ pursuant to Modification 12 to the contract and that INSLAW claims as proprietary. (Ling, T. 1062) The precise cost to INSLAW of creating solely those specific enhancements has not been established but is irrelevant (even if that cost were as low as the \$400,000 to \$1.4 million range testified to by DOJ witness Gagliardi -- which, given Gagliardi's bias, this Court does not believe). (Gagliardi, T. 2071) The only relevant fact in this regard is that each of the enhancements was developed solely with private funds, and it has been so proven.

59. INSLAW has further demonstrated that during the same time period, it had \$12,998,076 available from private funding sources to support its in-house software development and software development for private clients, exclusive of

funds paid to INSLAW pursuant to federal government contracts.
(PX 231; Ling, T. 1065-72, 1074-75)

60. Among the sources of those private funds is a category of fees paid by subscribers to INSLAW's maintenance program. (PX 231; Ling, T. 1066) Pursuant to separate maintenance agreements and for a fee, these subscribers receive error corrections and maintenance enhancements from INSLAW on a periodic basis. (Ling, T. 1067)

61. Two of INSLAW's maintenance customers were federal government clients, DOJ's Land and Natural Resources Division and the Occupational Safety and Health Review Commission ("OSHARC"), which contributed funds to a maintenance pool used to support general maintenance for all of INSLAW's maintenance customers. (Ling, T. 1067; PX 236) Although the government has at times contended that these contributions to an overall maintenance pool entitle the government to unlimited rights in all changes and enhancements funded through the general maintenance account, the Court rejects this contention for two reasons.

62. First, and more importantly, these two federal agencies received all maintenance enhancements pursuant to express contractual agreements with INSLAW that contain the following clause:

Proprietary Information

The documentation, bug fixes, enhancements and the ideas and expressions contained therein, and any copyrights thereof are acknowledged by Customer to be confidential proprietary

information (hereinafter called Program Product) belonging solely to INSLAW. Customer will not for the duration of this agreement nor at any time thereafter, without the prior written permission of INSLAW: (a) permit or cause any person (i) to copy or duplicate any physical form of the Program Product from or to any media except for archival or security purposes; or (ii) to create or to re-create, or to attempt to create or recreate the source programs, object programs or any other aspect of the Program Product in whole or in part; or (iii) to gain any access to confidential information learned pursuant to this agreement; or (b) permit or cause such information to be placed into the public domain, whether pursuant to law or otherwise.

(PX 236a; Ling, T. 1068-69) Thus, the government did not obtain through these maintenance agreements any rights to copy, disclose or disseminate these changes and enhancements. Rather, the government thereby acknowledged that all maintenance changes and enhancements were proprietary to INSLAW.

63. Second, the revenues that these two agencies contributed pursuant to the maintenance contracts amounted to less than one-half of one percent of all private funds available to INSLAW for its proprietary enhancements, which the Court finds in any event to be de minimis, so as not to afford the government any ownership rights in the enhancements and changes created using maintenance funds. (Ling, T. 1077)

64. Because the analysis performed by the government auditor, Alan Gibson, assumed that these maintenance accounts commingled private and government funds, without any information or understanding concerning the contracts entered into between the government clients and INSLAW, Mr. Gibson's

analysis of the funding sources for INSLAW's proprietary enhancements is not entitled to great weight. (Gibson, T. 2237-2239) In fact, Mr. Gibson admitted that he had no knowledge of the substance of any of the enhancements, or of the meaning of entries on the report forms used by INSLAW to track its maintenance changes or enhancements, or of any other documents that might reflect the dates on which work was performed by INSLAW programmers.^{6/} (Gibson, T. 2239-2244)

65. Despite its claims that INSLAW's project code 22 was funded in part by corporate overhead which allegedly was derived in part from overhead charged to DOJ under the PROMIS Contract, DOJ has no knowledge, and has failed to demonstrate, that any government overhead or computer center funds in fact supported any software claimed by INSLAW to be developed at private expense. (Gibson, T. 2246-2249) INSLAW had sufficient private funds to support all of INSLAW's private software development, and, in any event, the amortized portion of any capitalized software was less than the difference between INSLAW's actual overhead costs and the maximum amount that could have been contributed by the government to the overhead pool. (Ling, T. 1097-1099, 1105-1107) Moreover, because government audits have questioned the allowability of any

6/ Mr. Gibson also admitted that although he was present at INSLAW for a period of approximately three weeks in mid-June and early July 1987, and saw Ms. Holton on numerous occasions, never once during that time did Mr. Gibson attempt to resolve any of his questions concerning INSLAW's methods and records with Ms. Holton. (Gibson, T. 2250)

overhead payments reflecting costs for INSLAW's independent research and development, the government has not in fact paid any allocable share of such overhead costs. (Ling, T. 1107; Gibson, T. 2227)

66. An auditor for the government has reviewed INSLAW's financial records in order to reconcile INSLAW's records with the analysis reflected in PX 230 and PX 231 and concluded that the method reflected in that analysis is reasonable, and that the figures reflected therein are correct, with the exception of minor differences that are either insignificant or in INSLAW's favor. (Gibson, T. 2245-2246, 2251-2252; Ling, T. 1075-76) The analysis reflected in PX 230 and PX 231 was performed in accordance with generally accepted accounting principles. (Ling, T. 1061)

B. INSLAW HAS DEMONSTRATED THAT THE THREE MAJOR ENHANCEMENTS, THE DATA BASE ADJUSTMENT SUBSYSTEM, THE BATCH UPDATE SUBSYSTEM AND THE 32-BIT ARCHITECTURE VAX VERSION OF PROMIS, WERE CREATED USING PRIVATE FUNDS AND ARE PROPRIETARY TO INSLAW

67. INSLAW has created, using private funds, two subsystems of PROMIS, known as Batch Update and Data Base Adjustment, which were included neither in the pilot version of PROMIS nor among the BJS enhancements. (Holton, T. 1123)

68. Neither of these subsystems was required to be delivered to the government pursuant to the Statement of Work in the 1982 Executive Office contract. (Hamilton, T. 125, 2571-2578)

69. Data Base Adjustment was created by INSLAW in late 1983 as a private research and development project, and was not requested, required or funded pursuant to a contract with any particular client. (Holton, T. 1127) (See F.F. ¶¶ 22 and 29 above as to two programs that comprised an earlier version of the Data Base Adjustment package.)

70. Development of Data Base Adjustment was assigned by INSLAW a separate charge code, 2214, which indicates that it was part of INSLAW's independent research and development project, Project 22. (Holton, T. 1128) In October 1983, at the beginning of the new fiscal year, INSLAW's accounting department assigned the Data Base Adjustment development project a different charge code, 9060, which again reflected independent research and development projects under Project 90. (DX 212 [Holton] at pp. 217-218) Charge codes 2214 and 9060 were used exclusively by INSLAW programmers when billing time to Data Base Adjustment development. (DX 212 [Holton] at pp. 492-493; Holton, T. 1128)

71. While paragraph 3.2.4.1 of the Statement of Work required INSLAW to tailor a number of the individual versions of PROMIS provided to the larger United States Attorneys' Offices, and although INSLAW used its Data Base Adjustment enhancements for that purpose, the contract itself does not state that INSLAW is to develop software for that purpose. (Hamilton, T. 2575-2578, 2609-2610; PX 17) In the absence of Modification 12, and if DOJ requested software for data base adjustments, INSLAW could have and no doubt would have provided

hard-coded, specific-need programs to perform the specified data base retaioring services, rather than and in preference to giving up its proprietary rights to its Data Base Adjustment enhancements. (Hamilton, T. 2575-2578, 2607-2610) (See F.F. ¶ 27 above.)

72. INSLAW provided the Data Base Adjustment Subsystem to DOJ pursuant to contract Modification 12. (Hamilton, T. 2578-2579)

73. The Batch Update Subsystem was created by INSLAW in November 1981 through early 1982 as a task under a contract with a private, non-federal government client. (Holton, T. 1129-31; PX 322) INSLAW's accounting department assigned the development of Batch Update an individual charge code, 0405, which reflected that it was a task under the overall Project 04 for a private client. (Holton, T. 1131)

74. Although paragraph 3.2.2.7 of the Statement of Work refers to the transfer of information from the existing Docket and Reporting System database to a PROMIS database, and while INSLAW used the Batch Update subsystem for that purpose, the record demonstrates that the development of the Batch Update subsystem occurred prior to the execution of the 1982 Executive Office contract and that the development occurred using private funds. (Hamilton, T. 2571-2575; Holton, T. 1129-31)

75. The pre-existing Batch Update subsystem also was capable of transferring many kinds of computerized information into an existing PROMIS database, and had capabilities well

beyond the input of information from the Docket and Reporting System into PROMIS. (Hamilton, T. 2574-2575)

76. Hamilton testified that in the absence of Modification 12, INSLAW would have provided the government with limited purpose software that would only have enabled the government to transfer information from a particular Docket and Reporting System database to a particular PROMIS database. (Hamilton, T. 2575, 2605-2607) In contrast, the Batch Update subsystem was capable of transferring information from numerous different kinds of data bases into the various PROMIS formats, without "hard-coding, testing and debugging" the entire program each time. (Hamilton, T. 2571-2575)

77. Batch Update was delivered to the government by INSLAW pursuant to Modification 12, and has been used by the government. (Hamilton, T. 2575)

78. INSLAW delivered to the government twenty-two separate versions of PROMIS that contained all of the individual PROMIS enhancements and changes, as well as the entire Batch Update subsystem, and one program of the Data Base Adjustment subsystem. (Hamilton, T. 2588-2589) INSLAW delivered to the DOJ a separate tape containing all nine programs in the Data Base Adjustment subsystem, and delivered in each individual version of the PROMIS software for the United States Attorneys' Offices one of the nine Data Base Adjustment programs. (Hamilton, T. 2579, 2589; Gagliardi, T. 2067, 2069)

79. INSLAW was not required to develop a 32-bit architecture VAX version of PROMIS pursuant to any contract or for any private client. (Holton, T. 1132-33) The VAX version was not required to be delivered to the government under the Statement of Work in the 1982 Executive Office contract unless the government chose to implement VAX computers in its individual offices. (Hamilton, T. 2580-2581) Because the DOJ chose to use Prime minicomputers rather than VAX computers, INSLAW was not otherwise required to deliver the VAX version of enhanced PROMIS under the 1982 Executive Office contract. (Hamilton, T. 2580-81)

80. The funding for the VAX version was channelled through INSLAW's computer center, and supported with private research and development funds. (Holton, T. 1250-51)

81. The reason that INSLAW turned over to the DOJ the VAX version of PROMIS was because of the request of the Contracting Officer in December 1982, and pursuant to Modification 12. (Hamilton, T. 2581; PX 46; PX 78) In the absence of Modification 12, INSLAW would not have provided the VAX version of PROMIS to the DOJ. (Hamilton, T. 2581)

82. It was common knowledge among INSLAW's senior personnel and was discussed at senior staff meetings that the Batch Update subsystem, Data Base Adjustment subsystem and VAX development were being created by INSLAW, and that they were being developed at private, non-federal government expense. (Holton, T. 1142-43, 1193)

C. INSLAW HAS DEMONSTRATED THE CREATION OF NUMEROUS
INDIVIDUAL PROPRIETARY CHANGES AND ENHANCEMENTS TO
PROMIS USING PRIVATE FUNDS

83. INSLAW has also demonstrated that numerous discrete proprietary changes and enhancements to PROMIS were created with private funds. They were provided to the government pursuant to Modification 12. Precisely how many such changes and enhancements there were depends on the method of counting^{that is} used.

As Hamilton testified at trial:

[A] given change that is sewn into the software can be looked at from several different perspectives.

And you can have a single change ... that can affect multiple modules, and each time its in a different module it has -- there is labor, separate labor involved to insert it, and then, within a single module, it can affect a number of different locations in the code.

And each one of those locations in the code requires independent labor to insert. So you can count them in three different ways. Each way represents a legitimate perspective, and a big part of Mr. Videnieks' quarrel, as far as the so-called errors, was not understanding the difference in the three different perspectives of counting.

(Hamilton, T. 368-369) Thus Videnieks' initial debate with INSLAW over whether the number of enhancements was 800 or 247 or whatever was based upon his fundamental lack of understanding of the nature of the enhancements themselves.

INSLAW noted in a June 11, 1987 discovery-response memorandum that a large number of the individual enhancements

encompassed changes to more than one program module, and numerous changes within the same program module:

Often one change or enhancement to a particular software module will require additional changes both within that software module and to other software modules. For example, Change Number 0270 was made to module PR4400 in one place, involving eight to lines of code, but required changes as well to PN9974 in two places, involving changes to one line each; PN9972 in one place to one line; and to PN9971 in one place to one line. Change Number 0283 originally modified module WN997a in one place, involving ten lines of code, but also affected ten lines of code, but also affected modules PN9971 and PN9961 in two places each, and for six lines for each change. Change Number 0055 involved one change to the program documentation and changes to module PR4300 in twenty-four locations for a total of ninety-four lines of code.

(DX 212e, Exh. 18 at 19) This description lists only a few of the many changes that affect numerous modules in a number of individual locations. (See also, change numbers 0211, 0221, 0251, 0271 of PX 224) For that reason, as Hamilton explained at trial, each change or enhancement could actually be considered as several enhancements. As INSLAW concluded in its June 11, 1987 memorandum to DOJ, "purely numerical analyses of the software enhancements are not particularly instructive and are potentially misleading." (DX 212e, Exh. 18 at 19)

With respect to the alleged "reductions" asserted by DOJ, this Court finds that INSLAW reduced the number of enhancements claimed as proprietary because INSLAW ascertained that certain enhancements, even though they were privately

funded, were provided to the government under earlier contracts such as the Pilot project. (Holton, T. 1219-1220) For example, during the deposition of Ms. Holton, DOJ provided INSLAW with excerpts from the pilot version of PROMIS that, to Ms. Holton's mind, cast doubt on whether certain of the privately-funded enhancements previously had been included in the pilot version. Following a detailed comparison of the enhancements list and the pilot project software, INSLAW then withdrew its claims. Among the privately funded enhancements that were discovered to have been included in the pilot project software was one of the major enhancements, i.e., the Historical Purge package. Thus, even though INSLAW created those enhancements with private funds, INSLAW recognized that it could not in fairness assert proprietary rights to those enhancements against the Government and accordingly withdrew those claims from this proceeding. INSLAW similarly withdrew its claims with respect to those five discrete enhancements that at trial appeared to Ms. Holton to be included in the July 18, 1981 LEAA/BJS version of PROMIS.

This process of comparing the enhancements proofs with the previously-provided PROMIS software could have been performed easily by INSLAW with DOJ's assistance in the summer of 1983, when INSLAW attempted to negotiate this issue with DOJ and submitted to DOJ its memoranda proving specific enhancements. All of the documents used by INSLAW in this proceeding to identify the funding of its enhancements existed at the time the negotiations should have occurred. As Mr. Rugh

conceded at trial, the proofs offered by INSLAW would have satisfied him that the enhancements were indeed privately funded. (Rugh, T. 1517-1520) DOJ was required to negotiate then, in 1983, as Videnieks specifically had proposed under Modification 12 (see PPFF 228-236), but instead it wrongfully and cynically failed either to negotiate in good faith or even to reveal to INSLAW any purported concerns of Messrs. Rugh and Videnieks at that time with INSLAW's proposed method of proof (see PPFF 246-250).

It is obvious and this Court finds that, contrary to DOJ's unwarranted implications, any reduction in the number of enhancements identified by INSLAW was not caused by the purported inadequacy of any assumptions employed by Ms. Holton in her analysis. The reductions, rather, were caused by INSLAW's desire to present this Court with the most conservative measure of INSLAW's enhancements, by giving DOJ the benefit of the doubt whenever there was any real question, without the "window dressing" of counting each enhancement as several changes, or by breaking out the literally thousands of individual components of each of the three major enhancements.

In any event, the ultimate question to be answered under the automatic stay provisions is not whether 247 or 151 or 105 enhancements were misappropriated by DOJ. The fact that DOJ unlawfully has exercised control over even one of INSLAW's proprietary enhancements constitutes a violation of the automatic stay and entitled INSLAW to judgment in its favor on the merits.

84. INSLAW's privately-funded, proprietary maintenance changes and enhancements were not required to be delivered to the government under the Statement of Work in the Executive Office contract, paragraph 3.2.4.3, because they were not responsive to requests made or errors reported to INSLAW by the Executive Office. (Hamilton, T. 2567-2571; PX 17) These changes and enhancements are being used by the Department of Justice. (Hamilton, T. 2571)

85. These changes are identified by INSLAW within the source code of PROMIS according to standards established by INSLAW, using a system of change markers as "bookends" before and after the actual changes to the PROMIS code. (Holton, T. 1177-1180; PX 229 [designated "Confidential"]) The history of all changes to the programs are also listed within a history section at the beginning of each program or program module. (Holton, T. 1176-1179; PX Confidential 229) INSLAW's documentation standards are more extensive than those generally employed by software developers in the industry. (Delutis, T. 1287-1288)

86. Because of INSLAW's standard documentation for tracking changes and enhancements made by INSLAW to PROMIS, INSLAW is able to remove any changes or enhancements and provide an earlier version of PROMIS to a user without the changes or enhancements. (Holton, T. 1180-81)

87. Each of these individual changes or enhancements originated either with a request from a user or an "in-house" suggestion from an INSLAW programmer. (Holton, T. 1181, 1184)

These requests and suggestions are recorded by INSLAW on report forms, which are retained by INSLAW in a master book. (Holton, T. 1181-1185; PX 226a) The top portion of the form records the reason for the requested change, the origin of the change and the date the change was requested. (PX 226a; Holton, T. 1183-85)

88. When the change is completed, the INSLAW programmer also completes the lower portion of the report form, noting the programmer who performed the change, the date the work was completed, the programs that were changed as a result of the work and any other pertinent comments concerning the changes made to the programs. (Holton, T. 1183-87, 1259; PX 226a)

89. These report forms are maintained by INSLAW for the use of its software division, and are not used by INSLAW in financial accounting. (Holton, T. 1259-1260)

90. By matching the changes noted in the source code with the report forms, and then examining the time sheets of the programmers during the period when the programmer worked on the changes, INSLAW has demonstrated that changes and enhancements to PROMIS were created by INSLAW and funded through non-federal government, private sources. (Holton, T. 1186-1187; PX 354) The assumptions utilized by INSLAW in making such demonstration were reasonable. (DeLutis, T. 1293-1298) These changes and enhancements that INSLAW claims as proprietary are identified on PX 224.

91. Many of the individual enhancements summarized on PX 224 add to PROMIS new functionality, or efficiency, or increase the "user-friendliness" of PROMIS, i.e., make PROMIS easier to use. (Holton, T. 1215-1219; Delutis, T. 1284-1285; PX 228) Many more of these changes and enhancements added to user confidence in PROMIS insofar as certain latent defects were discovered and corrected and PROMIS therefore became more reliable. (Delutis, T. 1284) No software the size of PROMIS is completely and totally "error-free", and this fact is well known and recognized among computer software companies and their customers, as demonstrated by the special, restricted definition given by DOJ to the term "error-free" in the contract which DOJ drafted and which is at issue here. (Delutis, T. 1284; Hamilton, T. 2568; Dero, T. 2496-2497)

92. INSLAW defined a "bug" or "software error" as a problem with the source code that stops the program from executing or generates incorrect results, and an "enhancement" as a change that expanded the capabilities of the program. (Holton, T. 1258-1259)

93. Although DOJ's expert defined "enhancement" differently from INSLAW, and although he only concentrated on eight of the more than one hundred discrete changes and enhancements claimed as proprietary by INSLAW, even DOJ's expert conceded that there was no question that among the discrete changes shown on Plaintiff's exhibit 224, INSLAW had created enhancements to PROMIS. (Gagliardi, T. 2037-2038, 2065-66, 2096; DX 207a at 18) Dr. Gagliardi also conceded that

he did not spend time forming opinions as to the functional significance of any of INSLAW's enhancements and changes to FROMIS. (Gagliardi, T. 2044, 2065, 2096-2097)

94. Given the standards within the software industry for bookkeeping, accounting and documentation relating to software maintenance, and given the practices common within INSLAW and the industry at large relating to software development, INSLAW's method of proof that the individual changes and enhancements identified on PX 224 were privately funded is reasonable. (Delutis, T. 1298)

95. Defendants' expert, Dr. Gagliardi, posited that productivity rates for INSLAW's programmers could be accurately determined by dividing the raw number of lines of code in particular changes and enhancements by the number of hours shown on programmer time sheets. (Gagliardi, T. 2020-2023; DX 207a) Although Defendants' expert testified that the "productivity" rates for the Batch Update and Data Base Adjustment subsystems appeared to him to call into question INSLAW's time accounting records, that testimony was based merely upon a purely numerical analysis of these subsystems, and not on any knowledge of the substance of the programs and not on any knowledge of the substance of the programs themselves. (Gagliardi, T. 2053, 2077, 2090; DX 207a) (See also F.F. ¶ 318 concerning this witness's bias, which caused him to testify in whatever way he thought might defeat INSLAW's claims, without regard to the truth.)

96. The results of Dr. Gagliardi's statistical analysis are undercut by the substance of those subsystems and

the circumstances underlying the creation of those subsystems; approximately 25% of each of those subsystems consisted of unexecuted program documentation, which can be written much more quickly than lines of code. (Holton, T. 2507-2509, 2511) A great number of the lines of code in each of those subsystems was generated by other INSLAW software rather than coded manually by the programmers. (Holton, T. 2509, 2511) In addition, Dr. Gagliardi's count of the number of lines of code may well include "copy members" that already existed in the PROMIS programs and would not have been rewritten by the programmers who coded these subsystems. (Holton, T. 2526) These factors and others, including the experience, capabilities and work habits of the programmers who worked on these two subsystems, affect Dr. Gagliardi's conclusions by as much as fifty percent and perhaps more. (Holton, T. 2506-2515)

97. Even excluding the substantial number of lines of code changed or added to PROMIS as a result of the development of the 32-bit VAX version of PROMIS, Defendants' expert conceded that INSLAW's proprietary enhancements constitute at least eleven percent of the total code of PROMIS. (Gagliardi, T. 2070-2071) However, an analysis of value based solely upon the number of lines of code can be misleading because, as Defendants' expert noted, it is desirable for a programmer to devise a program that consists of as few lines as possible so as to take up less memory space and execute more quickly. (Gagliardi, T. 2098-2100)

III. C. MADISON BREWER'S RELATIONSHIP TO INSLAW AND THE
ORIGINS OF HIS BIAS AND LACK OF IMPARTIALITY TOWARD INSLAW

A. BREWER'S FIRING BY HAMILTON

98. C. Madison Brewer, III ("Brewer") was employed by the Institute as its general counsel from November 1974 to April 1976. (Answer ¶7; Brewer, T. 1571; Hamilton, T. 90; Merrill, T. 812) At the time of his employment, Brewer understood that Hamilton and the Institute were synonymous. (PX 324 [Brewer] at p. 49; Brewer, T. 1655)

99. Hamilton interviewed Brewer prior to hiring him. (Hamilton, T. 91) At the time, Hamilton was looking for a former prosecutor to act as general counsel whose primary responsibility would be to serve as an intermediary between the Institute and its marketplace of public prosecutors. (Hamilton, T. 91; Merrill, T. 755) In this liaison capacity, the general counsel would translate between what public prosecutors wanted and what the Institute had to offer. (Gizzarelli, T. 469; Brewer, T. 1575; Hamilton, T. 91; Merrill, T. 755) The general counsel would also be a key player in the "inner circle" of managers who were utilized by Hamilton for running the Institute. (Hamilton, T. 84, 92; Merrill, T. 751) Hamilton fully informed Brewer about these duties and responsibilities and hence Brewer must have understood the nature of the position. (Hamilton, T. 91; Gizzarelli, T. 469) Prior to accepting the position at the Institute, Brewer was also informed by the out-going general counsel that Hamilton

III. C. MADISON BREWER'S RELATIONSHIP TO INSLAW AND THE
ORIGINS OF HIS BIAS AND LACK OF IMPARTIALITY TOWARD INSLAW

A. BREWER'S FIRING BY HAMILTON

98. C. Madison Brewer, III ("Brewer") was employed by the Institute as its general counsel from November 1974 to April 1976. (Answer ¶7; Brewer, T. 1571; Hamilton, T. 90; Merrill, T. 812) At the time of his employment, Brewer understood that Hamilton and the Institute were synonymous. (PX 324 [Brewer] at p. 49; Brewer, T. 1655)

99. Hamilton interviewed Brewer prior to hiring him. (Hamilton, T. 91) At the time, Hamilton was looking for a former prosecutor to act as general counsel whose primary responsibility would be to serve as an intermediary between the Institute and its marketplace of public prosecutors. (Hamilton, T. 91; Merrill, T. 755) In this liaison capacity, the general counsel would translate between what public prosecutors wanted and what the Institute had to offer. (Gizarelli, T. 469; Brewer, T. 1575; Hamilton, T. 91; Merrill, T. 755) The general counsel would also be a key player in the "inner circle" of managers who were utilized by Hamilton for running the Institute. (Hamilton, T. 84, 92; Merrill, T. 751) Hamilton fully informed Brewer about these duties and responsibilities and hence Brewer must have understood the nature of the position. (Hamilton, T. 91; Gizarelli, T. 469) Prior to accepting the position at the Institute, Brewer was also informed by the out-going general counsel that Hamilton

was a fast-paced person who was an entrepreneurial type who wanted to get things done. (Gizzarelli, T. 470)

100. From the outset, Brewer was himself unhappy because of his misconception of what the job as general counsel entailed. (PX 324 [Brewer] at pp. 41, 49-50; Brewer, T. 1576) Within weeks of his joining the Institute, Brewer himself came to realize that his concept of what a general counsel was to be was radically different from Hamilton's, in that Hamilton chose to make decisions without consulting Brewer. (PX 324 [Brewer] at p. 43; Brewer, T. 1576)

101. Brewer reported to Hamilton, who observed his performance as general counsel of the Institute. (Hamilton, T. 92) On at least three specific occasions, Brewer failed to perform important tasks assigned to him. (PX 324 [Brewer] at pp. 39-45; Hamilton, T. 93-94; Merrill, T. 756) Brewer was informed on a number of occasions in 1975, beginning at least as early as April, that his work was unsatisfactory and that he would have to make efforts to improve or consider leaving his employment. (Hamilton, T. 93-95; Merrill, T. 757, 812-813) Brewer's contrary testimony is unbelievable for a variety of reasons, including his own testimony referred to in F.F. ¶¶ 103 and 106-110 below. See also F.F. ¶¶ 107 and 108.

102. Brewer himself understood that he was not performing one of his critical duties, which was to generate income for the firm. (PX 324 [Brewer] at p. 65) In addition, Brewer believed that he was a substantial "drag on the

overhead," because of his failure to generate business. (PX 324 [Brewer] at pp. 64-65) He also understood that there were projects assigned to him which either were not completed or not done in a timely manner, and he was aware of Mr. Hamilton's disappointment as a result thereof. (PX 324 [Brewer] at pp. 39-45; Hamilton, T. 93, 97; Merrill, T. 756)

103. When Brewer's performance did not improve, Hamilton informed Brewer that he was not fitting in at the Institute, that he was like a "duck out of water". (Hamilton, T. 94-95; PX 324 [Brewer] at pp. 51-55; Brewer, T. 1584; Merrill, T. 756-757) Hamilton cited to Brewer the ways in which it was not working out and asked him to leave. (Hamilton, T. 94-95) Because of Hamilton's concern that firing Brewer would have a negative impact on the Institute's relationship with the local D.C. United States Attorney's Office (because the Institute originally had supported that office as a principal source of revenue and because the Institute had hired Brewer from this office), Hamilton told Henry F. Greene, then Chief of the Superior Court Operations of the United States Attorney's Office for the District of Columbia, that Brewer was not fitting in at the Institute, and sought his advice and the advice of others about how to fire Brewer painlessly. (Gizzarelli, T. 473; Hamilton, T. 95)

104. Because of his belief that Brewer's performance was not likely to improve, Hamilton told Brewer specifically to look elsewhere for work and to give Hamilton a date certain to leave. (PX 324 [Brewer] at pp. 51-55; Brewer, T. 1583;

Hamilton, T. 96, 249, 252) In early April 1976, Hamilton again asked Brewer when he would be leaving the Institute for other work because of the length of time it was taking Brewer to leave. (Hamilton, T. 96; PX 324 [Brewer] at p. 67; Gizzarelli, T. 473) In April 1976, Brewer was terminated by Hamilton because of his failure to perform his job duties and responsibilities. (Hamilton, T. 97; Gizzarelli, T. 470-471; Merrill, T. 756-757)^{7/} Brewer finally left the Institute at the end of April 1976 and returned to his earlier position as an assistant U.S. Attorney for the District of Columbia. (PX 324 [Brewer] at pp. 66-67; Brewer, T. 1581; Hamilton, T. 97; Merrill, T. 812)^{8/} On the basis of all of the evidence, Brewer unquestionably knew that he was being fired for cause; he had no reason to believe that he was leaving

^{7/} In an effort to accommodate Brewer upon his departure from INSLAW, Hamilton gave Brewer a raise in April 1976 in response to Brewer's statement that his salary at the U.S. Attorney's Office would be determined by his departing salary at INSLAW. (Hamilton, T. 400-401) This was the only basis for giving Brewer the raise. (Hamilton, T. 401)

^{8/} Immediately before joining INSLAW in November 1974, Brewer had told the U.S. Attorney in Seattle, Washington that he would accept a position with that office. (Brewer, T. 1574) Several days later he called the U.S. Attorney to say that he would not accept the position. (Brewer, T. 1574-1575) Similarly in 1976, Brewer again accepted a position with the U.S. Attorney's Office in Seattle and several days later called that office to inform them that once again he had changed his mind and declined the offer of the position. (Brewer, T. 1579-1580)

voluntarily.^{2/} This Court rejects DOJ's argument in favor of Brewer's contrary contention.

Hamilton was simply being humane, as well as a good manager and a protector of INSLAW's own best interest, by not publicizing the fact that Brewer was being forced out, rather than leaving voluntarily.

105. Brewer understood that when he gave notice of what he characterized as his "decision to leave", he was "no longer part of Hamilton's 'select circle,' and was no longer included in meetings of any import". (PX 324 [Brewer] at p. 61; Brewer, T. 1584) He also stated that he had become a "non-person" and "outside of the inner-circle," and that this

2/ Brewer testified at trial that there was a changed, hostile attitude by INSLAW employees towards him after the FBI interviewed them as part of its employment-related background investigation of him preceding his return to the U.S. Attorney's office. This Court believes that testimony was a deliberate fabrication. The Court infers that Brewer so testified because he believed or feared that an INSLAW employee may have "spilled the beans" to the FBI about the true circumstances of his departure from INSLAW; hence he feared that the FBI investigation report would significantly undercut his testimony that he left INSLAW voluntarily; and he wanted to defuse that adverse evidence to the extent possible.

situation, which he characterized as putting him in an awkward position, lasted from the middle of 1975 to April, 1976, when he finally left. (PX 324 [Brewer] at pp. 60-65; Brewer, T. 1584)

106. During Brewer's employment at the Institute, he developed very negative opinions about Hamilton. (PX 324 [Brewer] at pp. 61, 70-79; Brewer, T. 1587-1588) Brewer believed that Hamilton had a "messianic personality" and a very distorted view of reality. (PX 324 [Brewer] at pp. 61, 70; Brewer, T. 1649) Brewer perceived that Hamilton had a persecution complex and that Hamilton thought "there was a conspiracy to get him." (PX 324 [Brewer] at p. 70) According to Brewer, Hamilton allegedly had a "love/hate fixation about the law or lawyers" and was very hostile to lawyers and particularly prosecutors. (Brewer, T. 1592, 1653-1654; PX 324 [Brewer] at p. 71) Brewer also believed that Hamilton did not view facts objectively and that Hamilton considered all persons who disagreed with him as his "enemy." (PX 324 [Brewer] at pp. 70-72; Brewer, T. 1589, 1592)

107. On the basis of Brewer's observations, he concluded that Hamilton was "a very troubled individual". (PX 324 [Brewer] at p. 72; Brewer, T. 1651) In particular, Brewer considered that Hamilton was an "M.O.", which in prosecutor's vernacular is an individual sent away for mental observation because of bizarre behavior or a questionable capacity to comprehend court proceedings. (PX 324 [Brewer] at p. 74; Brewer, T. 1590; Gizzarelli, T. 474-475) Brewer freely

characterized Hamilton as "crazy Bill" and described Hamilton's conduct as "Bill's being crazy". (PX 324 [Brewer] at p. 78; Brewer, T. 1652)

108. Brewer also believed the Institute's empirical research to be of questionable value, non-utilitarian and "kind of a joke". (PX 324 [Brewer] at pp. 75-77; Brewer, T. 1660)^{10/} More importantly, Brewer thought that Hamilton had a very unrealistic view of PROMIS software and its role in the world. (PX 324 [Brewer] at p. 73)

109. These were opinions that Brewer developed during the period of time that he was the Institute's general counsel. (PX 324 [Brewer] at pp. 78-79; Brewer, T. 1653) Subsequent to leaving the Institute, Brewer repeated some of these negative comments to others. (PX 324 [Brewer] at pp. 79-80; Brewer, T. 1659-1660; Gizzarelli, T. 475) More

^{10/} By way of justifying his opinion, Brewer claimed that the Institute had conducted a study purportedly concluding that female prosecutors were more effective than male prosecutors and that the conclusion was unwarranted because there were only two female Assistant U.S. Attorneys at the time. (PX 324 [Brewer] at pp. 76-77) In fact, neither the Institute nor INSLAW ever published such a study, and since the gender of the government attorney is not even recorded in the PROMIS data base, it is highly unlikely that any such study could have been conducted, even by investigators acting on their own. (Hamilton, T. 2589-2591) This study was either a figment of Mr. Brewer's imagination or a construct created on the witness stand at trial in a desperate attempt to find some factual basis for his irrefutably false allegations about INSLAW's allegedly unsatisfactory work. Notwithstanding his public criticism of the Institute's empirical research, Brewer acknowledged at trial that he privately had taken credit for some of the Institute's more celebrated research work in his successful application to become a member of the Federal Government's Senior Executive Service. (Brewer, T. 1661)

Particularly, Brewer continued to refer to Hamilton as an "M.O." after Brewer rejoined the U.S. Attorney's office. (Gizzarelli, T. 475) ^{11/}

110. On the basis of the foregoing and the evidence taken as a whole, this Court is convinced beyond any doubt that, prior to assuming his position as the PROMIS Project Director at EOUSA, and during the course of discharging his responsibilities in that position, Mr. Brewer was consumed by hatred for and an intense desire for revenge against Mr. Hamilton and INSLAW, and acted throughout this matter in a thoroughly biased and unfairly prejudicial manner toward INSLAW.

IV. DOJ'S DECISION TO AUTOMATE U.S. ATTORNEY'S OFFICES WITH PROMIS AND TO HIRE BREWER AS PROMIS PROJECT MANAGER

A. NATURE OF DOJ'S CASE-TRACKING PROBLEM

111. Beginning in the early 1970's, both the Office of Management and Budget ("OMB") and the Congress were criticizing DOJ for its lack of management information concerning its litigation activities. (PX 9; PX 341 [Tyson] at p. 27) In response to this criticism, DOJ attempted to develop a more responsive case management system known as the Automated Caseload and Collection System ("ACCSYS"). (PX 9) In a 1978 internal audit study, DOJ found ACCSYS to be seriously deficient in applications, inflexible in use and expensive to

^{11/} Although Brewer denied using the term "M.O." more than once, he did admit that he stated during the course of the PROMIS Contract that "... Hamilton has a very, very distorted view of the world and that it's not realistic, it is mentally defective." (Brewer, T. 1659)

operate with estimated annual operating costs of \$500,000 per office. (PX 9) The system was finally abandoned in 1979. (PX 9)

112. During this same time period, LEAA was funding the PROMIS Project in the District of Columbia U.S. Attorney's Office. (PX 8; PX 9) The Old PROMIS System was also being utilized by numerous other state and local jurisdictions. (PX 9) Old PROMIS received enthusiastic endorsements from its various users because of its flexibility of use and breadth of hardware applications. (PX 9)

113. After careful study, DOJ's Justice Management Division ("JMD") and the Executive Office for United States Attorneys ("EOUSA") concluded in 1981 that the then-current docketing and reporting system should be replaced by Old PROMIS, as modified by INSLAW under the pilot project contract, in the 20 largest U.S. Attorney's Offices, and by word-processing software mimicking the functions of Old PROMIS, for the remaining 74 U.S. Attorney's Offices. (PX 2; PX 10) On August 27, 1981, Deputy Attorney General Edward C. Schmults approved a joint JMD/EOUSA proposal to implement Old PROMIS on local mini-computers in the 20 largest U.S. Attorney's Offices and on word processing equipment in the remaining 74 U.S. Attorney's Offices. (PX 4; PX 10; Hamilton, T. 109-111)

114. The PROMIS Project was understood by senior officials at DOJ to be the most important long-term improvement that could be made for U.S. Attorneys' Offices in particular, and law enforcement in general. (PX 1, PX 341 [Tyson] at

P. 33) In light of the importance of the project, Schmults directed that the originally proposed procurement schedule be moved up so that work on the project could begin at the earliest possible date. (PX 6)

115. Despite this recognition of the importance of the PROMIS Project by Senior DOJ officials, it was not universally supported by staff personnel at DOJ, particularly in JMD. (PX 341 [Tyson] at p. 53; Brewer, T. 1636; PX 3)

116. As part of DOJ's overall planning on the PROMIS Project, a senior level PROMIS Oversight Committee was organized in the spring of 1981. (PX 341 [Tyson] at pp. 17-18; PX 8) As Assistant Attorney General for the Criminal Division, D. Lowell Jensen attended PROMIS Oversight Committee meetings; as Associate Attorney General and Deputy Attorney General, Jensen was ranking member of that Committee. (PX 328 [Jensen] 83-84) The PROMIS Oversight Committee decided important strategic questions, but Brewer, the Project Manager, had responsibility for and direction of day-to-day activities. (PX 341 [Tyson] at p. 99; Tyson, T. 1541; PX 10)

117. A three year implementation contract for the PROMIS Project was planned with a Request for Proposal ("RFP") scheduled for issuance in October 1981 to be responded to within six weeks. (PX 5) The award of the contract was planned for March 31, 1982. (PX 5)

B. INSLAW'S RECOMMENDATION TO USE MICRO-COMPUTERS RATHER THAN WORD PROCESSORS IN THE EXECUTIVE OFFICE RFP

118. Prior to DOJ's issuance of the PROMIS Project RFP, several vendors approached DOJ with recommendations against the use of word processing equipment to perform the complex case-tracking functions of Old PROMIS. (PX 341 [Tyson] at pp. 46-47, 52-53)

119. In May 1981, Hamilton and Gizzarelli, on behalf of INSLAW, met with William P. Tyson, Director of EOUSA, and his deputy, Lawrence McWhorter, in an effort to persuade them that use of word processing equipment to perform PROMIS-like case control functions was ill-advised, particularly in light of the computation-intensive requirements of legal process debt collection and the availability of inexpensive full function micro-computers that could perform both data processing (i.e., processing functions. (Hamilton, T. 116; Gizzarelli, T. 496; Tyson, T. 1543-1545; PX 341 [Tyson] at pp. 43-44, 52-53) Moreover, INSLAW recommended that, if DOJ were not interested in substituting micro-computers for word processors, then DOJ should split the planned procurement into two separate procurements, one for computer-based PROMIS in the 20 largest offices and one for word-processing based case tracking for the 74 smaller U.S. Attorney's Offices. (Hamilton, T. 116-117)

120. Tyson responded to INSLAW's concern by indicating that he had no reason to doubt its validity but that, due to the difficulty of getting approval of the proposal, he was not

willing to change it. (Hamilton, T. 117) Tyson did say, however, that he would regard the entire contract as a success if computer-based PROMIS were implemented in the 20 largest U.S. Attorney's Offices regardless of whether implementation of word processing PROMIS was successful. (Hamilton, T. 117)^{12/} Hamilton's response to Tyson was that, under these circumstances, INSLAW would bid on the RFP and would do its best to make the entire project a success. (Hamilton, T. 118; PX 341 [Tyson] at p. 46)

^{121.} OMB, in response to an INSLAW inquiry after the meeting with Tyson and McWhorter, wrote to the Deputy Attorney General enclosing and endorsing an INSLAW analysis of the reasons for using full function computers rather than word processors for the PROMIS-like case control work in the 74 smaller U.S. Attorney's Offices. (Hamilton, T. 118-119; PX 7)

^{122.} Despite these recommendations, DOJ issued the PROMIS Project RFP on November 2, 1981. (Answer ¶12) The RFP sought bids for implementation of Old PROMIS on mini-computers and for PROMIS-like case control software that would work on word processing equipment. (Answer ¶12; Hamilton, T. 124) This proposal sought only the pilot project version of PROMIS plus the BJS enhancements. (Hamilton, T. 124; Merrill, T. 764-766, 840-841)

^{12/} Indeed, following completion of the Executive Office contract, a report submitted by Tyson to Stephens specifically stated that "[i]n the opinion of the project staff, . . . INSLAW, Inc. successfully completed all tasks required by the . . . software contract, or [was] precluded from doing so . . . (PX 178)

C. DOJ'S HIRING OF BREWER AS PROMIS PROJECT MANAGER

123. As part of the original approval of the PROMIS Project, Deputy Attorney General Schmults also approved the appointment of a PROMIS Project Manager. (PX 10) On January 6, 1982, Schmults approved an EOUSA request for the allocation of a Senior Executive Service Position for the PROMIS Project Manager. (PX 10)

124. In essence, the PROMIS Project Manager was assigned total responsibility for the implementation and development of the PROMIS Project for EOUSA. (PX 10) The Project Manager's responsibilities were three-fold: first, responsibility for coordination with the contract to implement the system within three (3) years in offices of differing sizes; second, responsibility for coordinating the utilization of PROMIS by the U.S. Attorney's Offices, JMD and DOJ; and third, responsibility for coordinating EOUSA activity associated with the implementation of PROMIS. (PX 10) In addition, the Project Manager was responsible for organizing a staff to administer the PROMIS Project. (PX 10)

125. In August 1981, Laurence McWhorter, Deputy Director of EOUSA, approached Brewer to become the PROMIS Project Manager. When this opportunity presented itself, Brewer, believing that he had been wrongfully discharged by Hamilton and INSLAW and having developed an intense and abiding hatred for Hamilton and INSLAW as a result thereof, applied for the PROMIS Project Manager's position with the purpose of using that position to vent his spleen against INSLAW. The evidence

showed conclusively, and beyond any question in the mind of this Court, that Brewer was consumed by hatred for and an intense desire for revenge against INSLAW and Hamilton. (PX 324 [Brewer] at p. 90; PX 341 [Tyson] at pp. 69-70; Tyson, T. 1539-1540) Brewer was interviewed for the position by McWhorter and Tyson of EOUSA and Rooney of JMD. (PX 341 [Tyson] at pp. 67-69, Tyson, T. 1539-1540; PX 330 [McWhorter] at pp. 21-23; Brewer, T. 1657)

126. During these interviews, Brewer did not disclose the opinions he held regarding Hamilton, because in his view they were "irrelevant." (PX 324 [Brewer] at p. 92; Brewer, T. 1647, 1657) In addition, Brewer did not disclose the reason for his termination from the Institute or the fact that he had been asked to leave. (PX 341 [Tyson] at pp. 70-71; Tyson, T. 1549; Brewer, T. 1658) Brewer also believed that his reasons for leaving the Institute were "irrelevant." (Brewer, T. 1658)

127. As of the time of these interviews, Brewer, Tyson, McWhorter and Rooney were all aware that INSLAW was the likely successful bidder for the work of performing the PROMIS Project. (PX 341 [Tyson] at p. 70; Tyson, T. 1539-1540; PX 330 [McWhorter] at p. 12; PX 324 [Brewer] at pp. 96-97) If Brewer had disclosed the actual circumstances of his termination, at least Rooney and Tyson would have made further inquiry into his employment at the Institute, and Rooney's strong inclination would have been not to hire Brewer. (PX 341 [Tyson] at pp. 71-72; Tyson, T. 1553-1554)

128. Despite this knowledge of INSLAW's role as a bidder on the Contract and DOJ's understanding that Brewer had previously been employed by INSLAW, this Court does not believe that any inquiry was made by DOJ to determine INSLAW's view of Brewer as an employee, or as to the circumstances of his termination from employment.^{13/} (PX 341 [Tyson] at p. 85; Tyson, T. 1551-1552, 1554; Hamilton, T. 296-297; PX 209 [Confidential])

Indeed, McWhorter and Tyson believed that Brewer's prior employment with INSLAW was a "plus" factor for DOJ, and failed to recognize that such prior employment would generally lead the former employee either to favor or to disfavor the former employer, thus preventing that person from being impartial in the discharge of his duties.

^{13/} DOJ points to Lawrence McWhorter's testimony that he had a 30-second telephone call with Hamilton, in which Hamilton said he felt no animosity toward Brewer and felt there would be no problem working with Brewer. This Court disbelieves McWhorter's testimony as well as the corroborative testimony of James Kelley, for the reasons set out in F.F. ¶ 398, below, and also because McWhorter never asserted having this conversation at any time prior to this litigation, notwithstanding his prior meetings with Hamilton in which Hamilton complained about Brewer's bias. McWhorter's testimony is also belied by the fact that, as soon as Hamilton found out that Brewer was being considered for the position of Project Manager, Hamilton sought to encourage others to apply for the position, hoping that someone else would be selected.

Even if such a conversation as McWhorter described had occurred, it could only have been in the context that McWhorter gave Hamilton to understand that Brewer was very likely to be hired for the position regardless of what Hamilton might say, thus leaving Hamilton little choice but to make the statements that McWhorter attributed to Hamilton. In any event, Brewer's improper conduct did not occur until well after this alleged telephone call.

129. Despite the fact that Brewer had no prior experience with computers, computer technology, computer programming, accounting, auditing or contract administration, he was hired as the PROMIS Project Manager and began in that position in January 1982. (PX 324 [Brewer] at pp. 9-10, 92-93; Brewer, T. 1643-1644) He was in full charge of administering the PROMIS Project. (Answer ¶7) In essence, Brewer was given day-to-day direct responsibility for the PROMIS Project. (PX 341 [Tyson] at p. 99; Tyson, T. 1540-1541) More particularly, in exercising this responsibility he effectively was left alone to implement the PROMIS system. (PX 341 [Tyson] at p. 105; Tyson, T. 1541)

130. As part of his responsibilities as Project Manager on the PROMIS Contract, Brewer was the liaison between EOUSA and other components of DOJ and served as the spokesman for EOUSA on the Project. (Brewer, T. 1604) Brewer also dealt directly with INSLAW in connection with the contract. (Brewer, T. 1654; Tyson, T. 1540)

131. Brewer and Rugh regularly informed Tyson of their views on INSLAW's assertion of proprietary rights in Enhanced PROMIS, their contingency plans for assuming control over the contract if discontinuation of advance payments caused INSLAW's insolvency, their awareness of delays in hardware procurement, and their concern that INSLAW might be entitled to additional time-sharing cost payments because of greater than anticipated use of PROMIS by the U.S. Attorney's Offices. (PX 237, 238,

239, 240, 241, 242, 243, 244, 245, 246, 248, 249) Brewer also briefed the PROMIS Oversight Committee as well as the staff of the Assistant Attorney General for the Criminal Division (who at the time was D. Lowell Jensen) in regard to the PROMIS Contract. (Brewer, T. 1604, 1661-1662) The Executive Office, including Brewer and his superiors, reported directly to Jensen when Jensen was Associate Attorney General and then began reporting directly to the Deputy Attorney General when Jensen was promoted to that position. (Brewer, T. 1661-1662; Tyson, T. 1534-1535)

D. BREWER'S ORGANIZATION OF DOJ'S PROMIS PROJECT TEAM

132. Brewer began organizing his staff for the PROMIS Project shortly after his appointment to the position. (PX 324 [Brewer] at pp. 101, 108-109) At the inception of the Project, Peter Videnieks had been appointed as Contracting Officer. (PX 324 [Brewer] at p. 104; Brewer, T. 1606; PX 39; PX 342 [Videnieks] at pp. 17-20; Videnieks, T. 1805-1807) Although at all times during the contract Videnieks was an employee of DOJ's JMD, EOUSA requested that he be assigned "full time" to the PROMIS Project, reimbursed JMD in full for his services and provided Videnieks with an office and file space. (PX 39; PX 238; PX 324 [Brewer] at p. 102; Brewer, T. 1606)

133. This "extraordinary action" was taken by Brewer to insure Videnieks' undivided service on the PROMIS Project. (PX 39) In September 1982, Tyson, at Brewer's request, sought and received Rooney's permission to have Videnieks assigned

essentially full-time to the PROMIS Project because of Brewer's belief that Videnieks was needed full time to "vigorously monitor the INSLAW contract". (PX 39) ^{14/} Videnieks was described by one witness as a puppet who responded to Brewer's direction. (Gizzarelli, T. 527) Videnieks' testimony, especially at deposition, but also in Court, reveals a man keenly aware of his own limitations and the superior ^{work} and knowledge possessed by Brewer and Rugh. Videnieks was a lower level employee who was dependent on the expertise of others, specifically Brewer and Rugh, in all areas about which he had to make decisions as the contracting officer, including accounting, computer software and computer hardware. In addition, Videnieks was dependent upon the good will and approbation of Brewer and Rugh for his professional livelihood and advancement.

INSLAW believed, with good reason, that Videnieks was not acting like a Government contracting officer in that he was not independent from the disputes or divorced from the operational aspects of the contract. (Gizzarelli, T. 527) Although a Government contracting officer is of course a representative of the Government and not a completely detached and neutral arbiter, nevertheless he has a responsibility -- which it is obvious Videnieks did not fulfill in this case --

^{14/} Significantly Videnieks testified that of approximately 600 to 650 contracts that he had worked on the INSLAW contract was only one of two contracts that went to litigation. (Videnieks, T. 1804-1805)

to act in a statesmanlike manner, somewhat "above the fray," at least to the same extent as would a corporate president, as William Hamilton has conducted himself. (Sherzer, T. 992) Indeed, the opinion of our Court of Appeals in Conax Florida Corp. v. United States, 824 F.2d 1124, 1128 (1987) suggested that a contracting officer can be regarded as separate from either "party," when that Court stated, "the parties litigated this threshold question before the Navy's contracting officer," and when the Court then held, "we may set aside the contracting officer's finding only if we determine it is arbitrary and capricious." (Emphasis added.)

134. Brewer interviewed and hired Michael Snyder as the Contracting Officer's Technical Representative ("COTR") in June of 1982. (PX 337 [Snyder] at p. 45) As COTR, Snyder was required to provide technical advice and assistance to the Contracting Officer in connection with the PROMIS Project. (PX 337 [Snyder] at pp. 29-30)

135. Snyder was hired as COTR despite the fact that he had very limited education, training or experience in computers, computer hardware and software, computer technology and installations. (PX 337 [Snyder] at pp. 5-9, 13) Although Snyder had some prior experience involving automated litigation systems, this was largely limited to legal research services, such as LEXIS or JURIS, and to document retrieval systems. (PX 337 [Snyder] at pp. 7-8, 17-19) In his position as COTR, Snyder discussed the PROMIS Project with Brewer on a daily

basis, and his office was two doors away from Brewer's office.
(PX 337 [Snyder] at pp. 28-29)

4. INSLAW GIVES POL PRICE OF ITS OWNERSHIP OF AND
EXERCISES RIGHTS TO PATENTED PROMIS

A. INSLAW GIVES PRICE OF THE PROMIS/PROXY CLAIMS

136. By the time that POL issued the RFP, INSLAW had made substantial enhancements to OLD PROMIS. (Hamilton, T. 103; Merrill, T. 703) These enhancements, which eventually included major new functional subsystems and substantial changes to the existing code, at a cost which INSLAW estimated to be \$8.3 million, rendered Enhanced PROMIS far superior to OLD PROMIS in terms of speed, flexibility, ease of use, breadth of function, and ability to be modified for particular needs. (Hamilton, T. 400; Merrill, T. 700-743; Nelson, T. 1216-1219)

Both before and after the PROMIS contract was signed, INSLAW specifically advised POLBA in writing that it had available for sale, at an additional cost, certain proprietary enhancements to PROMIS.

137. In the Technical Proposal responding to POL's PROMIS project request for proposals ("PPP"), INSLAW informed POL that it had made enhancements to OLD PROMIS which were proprietary, and as to which it had made a significant

137. Both Rugh and Videnieks were infected by Brewer's poisonous attitude towards Hamilton and INSLAW, and they aided and assisted Brewer in his wrongful efforts to injure INSLAW. Rugh also was improperly motivated by his desire to build a

Small empire within EOUSA if DOJ were to take over the job of software development and maintenance with respect to PROMIS software.

V. INSLAW GIVES DOJ NOTICE OF ITS OWNERSHIP OF AND PROPRIETARY RIGHTS TO ENHANCED PROMIS

A. INSLAW GIVES NOTICE OF ITS PROPRIETARY CLAIMS
138.

By the time that DOJ issued the RFP, INSLAW had made substantial enhancements to Old PROMIS. (Hamilton, T. 105; Merrill, T. 763) These enhancements, which eventually included major new functional subsystems and substantial changes to the existing code, at a cost which INSLAW estimated to be \$8.3 million, rendered Enhanced PROMIS far superior to Old PROMIS in terms of speed, flexibility, ease of use, breadth of function, and ability to be modified for particular needs. (Hamilton, T. 400; Merrill, T. 760-762; Holton, T. 1216-1219)

Both before and after the PROMIS contract was signed, INSLAW specifically advised EOUSA in writing that it had available for sale, at an additional cost, certain proprietary enhancements to PROMIS.

139. In its Technical Proposal responding to DOJ's PROMIS Project request for proposals ("RFP"), INSLAW informed DOJ that it had made enhancements to Old PROMIS which were proprietary, and as to which it had made a significant developmental and commercial commitment. (Answer ¶13; PX 12; Hamilton, T. 124-125; Gizzarelli, T. 482-483) In this regard, INSLAW specifically made a claim of proprietary rights in such enhancements. (Hamilton, T. 124) In response to INSLAW's

proposal, Videnieks requested a clarification of INSLAW's claim of proprietary rights to PROMIS software. (PX 13; Hamilton, T. 126; Merrill, T. 766-767) In an amendment to its Technical Proposal dated January 13, 1982, INSLAW responded to Videnieks' inquiry and specifically informed DOJ that "... all of INSLAW's software is proprietary to it thus far." (PX 14; Hamilton, T. 127) Videnieks did not respond further to INSLAW's amendment of its Technical Proposal. (Gizzarelli, T. 490; Merrill, T. 767-769) INSLAW also indicated that such programs were copyrighted and that since May 1981 it had been developing privately financed enhancements to PROMIS which were the exclusive property of INSLAW, and that DOJ had no license to use these privately-financed enhancements. (PX 14)

This Court rejects DOJ's contention that INSLAW offered to give up, without fee, all its proprietary rights in PROMIS when it offered to make "available to the United States Attorneys' Offices" new enhancements and modifications to PROMIS that INSLAW planned to develop "[d]uring the life of this project -- but not as part of this project." (PX 12) DOJ's interpretation ignores the crucial language "not as part of this project," whereby INSLAW clearly indicated that the enhancements were NOT being offered for no consideration or without a claim of proprietary rights.

In addition, DOJ's interpretation would lead to an absurd result. It would require this Court to believe, contrary to all the evidence, that INSLAW was willing to give

up, without fee, its corporate lifeblood -- was offering, in effect, to commit corporate suicide. (See F.F. ¶ 142 below.)

140. To illustrate this point, INSLAW, in its Technical Proposal, singled out the two-program version of the data base adjustment subsystem as an enhancement which had been developed by INSLAW using private funds. (Hamilton, T. 125; PX 14)^{15/} The data base adjustment subsystem was not required to be delivered under the contract nor had it been required to be delivered under any prior DOJ contracts (Hamilton, T. 125, 2575-2578; Merrill, T. 768). By this January 22 amendment, INSLAW illustrated the concept that INSLAW had all the proprietary rights in Enhanced PROMIS (Gizzarelli, T. 493).

141. Subsequent to receipt of INSLAW's response to Videnieks, and prior to the execution of the contract, no one from DOJ made any further inquiry of INSLAW, or raised any questions, concerning INSLAW's right to assert its proprietary rights in Enhanced PROMIS. (Hamilton, T. 128; Merrill, T. 767-769; Gizzarelli, T. 490) Brewer was not given and had not considered INSLAW's January 13, 1982 letter, or any of the

15/ Despite DOJ's efforts to confuse this issue, it is clear that although DOJ funded the "design" of the earlier data base adjustment, it was INSLAW's privately funded "execution" of this design which was the materially significant task in bringing this enhancement to the marketplace. (Merrill, T. 803-805) The design of a computer program is much akin to giving a builder ideas about where a door should be or the number of windows in a house, whereas execution of that design is tantamount to preparing blueprints and then building the house. (Merrill, T. 803-805)

pre-contract correspondence between INSLAW and Videnieks; therefore, Brewer's subsequent positions regarding INSLAW's proprietary rights were taken without consideration of this letter. (PX 324 [Brewer] at pp. 204-205)

B. DOJ'S CONFUSION OVER DATA RIGHTS

142. After INSLAW's submission of its Technical Proposal, Gizzarelli, Kelley, Merrill and Hannon from INSLAW had several negotiating sessions with DOJ personnel including Peter Videnieks, Jack Rugh, Patricia Goodrich and Brewer (who did not attend all of the sessions). (Gizzarelli, T. 484-485) At the first negotiating session in which the contractual data rights clause was discussed, Videnieks stated that DOJ was entitled to receive unlimited rights to the PROMIS software to be delivered under the contract. (Gizzarelli, T. 488-489, 582-583) In response, Kelley conveyed Gizzarelli's view to DOJ that INSLAW could not live with that restrictive data rights clause. (Gizzarelli, T. 486) The basis for this statement was that INSLAW existed solely on the basis of its PROMIS software and that such a broad data rights clause would destroy any business potential for INSLAW because "it would have in effect delivered to the DOJ all of the assets of INSLAW, Inc." (Gizzarelli, T. 486-487, 583-584) This Court accepts Gizzarelli's testimony concerning what was said at the negotiating sessions and rejects Kelley's contrary testimony for the reasons relating to credibility that are stated in F.F. ¶ 318.

143. At the next negotiating session, the attendees discussed the data rights clause again. (Gizzarelli, T. 487) INSLAW proposed changes to the contractual data rights provisions, and eventually negotiated terms that were acceptable to DOJ and that, INSLAW understood, preserved INSLAW's rights in the software. (Gizzarelli, T. 488)^{16/} Under this alternative proposal it was INSLAW's intention, of which DOJ was aware, that DOJ did not gain unlimited rights to any of INSLAW's proprietary enhancements to the software. (Gizzarelli, T. 488)

Both Hamilton and Brewer were acutely aware of the fact that permitting DOJ unlimited rights to INSLAW's proprietary enhancements was tantamount to corporate suicide, and neither understood that the contract was intended to give DOJ unlimited rights to these proprietary enhancements. This is the reason that Brewer later was determined to get these enhancements and why Hamilton was equally determined not to let Brewer get INSLAW's Enhanced PROMIS.

144. There is some uncertainty as to whether INSLAW and DOJ had a meeting of the minds on the PROMIS contract; DOJ's deletion of the "Rights in Data" clause from the PROMIS

^{16/} There is considerable doubt as to whether INSLAW and DOJ actually agreed to the data rights language which appears in DX 8, as opposed to a marked version of such language that contained interlining and marginalia submitted by INSLAW to DOJ as being acceptable to INSLAW. (Gizzarelli, T. 577-578) In addition, there is uncertainty as to the import of the use of the term "N/A" in the data rights clause which appears in DX 8. (Gizzarelli, T. 604; Di Pietro, T. 1953-1954)

Contract evidences that uncertainty, yet also demonstrates DOJ's awareness of the critical need for INSLAW to maintain its proprietary rights in its enhancements to PROMIS. (PX 15; PX 16; PX 17) Hamilton understood that DOJ had received the right to use the PROMIS computer software only in the 20 largest offices specified in the contract. (Hamilton, T. 363-364) Gizzarelli's and Merrill's understanding was similar to Hamilton's understanding. (Gizzarelli, T. 488; Merrill, T. 764, 769-770) Kelley testified that DOJ informed him that it only wanted to use the PROMIS computer software for the U.S. Attorney's Offices. (Kelley, T. 1385)^{17/} Rugh testified that he understood DOJ had the right to use the PROMIS software anywhere in DOJ and to distribute it to the rest of the federal government, to state and local government and even to private parties. (Rugh, T. 1434, 1463-1466) However, this Court does not believe that testimony, because Rugh acknowledged that he equally understood that INSLAW was actively attempting to market PROMIS software to private firms and state and local prosecutors. (Rugh, T. 1463) Nor does the Court believe the similar testimony of Brewer and Videnieks. Brewer testified that he understood that DOJ had absolute rights to give the PROMIS software away to anyone it chose,

^{17/} According to Kelley's testimony, he also understood that DOJ had rights to use and distribute the PROMIS computer software to anyone it wanted, even a private client, but that Brewer had stated that it was not DOJ's intent to distribute it beyond DOJ. (Kelley, T. 1382-1383)

including private parties. (Brewer, T. 1609, 1683-1684) Notwithstanding this purported belief, Brewer testified that he had a "gentlemen's understanding" with Kelley that DOJ would not give PROMIS away to private companies. (Brewer, T. 1686-1687) Videnieks testified that he understood that DOJ had the absolute right to give the software away to anyone, including private parties. (Videnieks, T. 1821-1823) Moreover, Videnieks believed that gentlemen's agreements or unwritten side agreements were not only unenforceable, but also would subject the government employee making such commitment to sanctions. (Videnieks, T. 1873-1878)

Neither Brewer nor Rugh nor Videnieks could fail to understand that, if INSLAW gave to DOJ the right to give away to anyone all of INSLAW's PROMIS software, INSLAW would be unable to market that software: Who would buy from INSLAW what could be gotten free from DOJ? Thus, Brewer, Rugh and Videnieks were bound to know that INSLAW did not intend what they now claim the contract meant.

145. In its original Technical Proposal, INSLAW also informed DOJ that completion of the scope of work contemplated in the RFP would cost approximately \$14 to \$15 million. (Hamilton, T. 129) INSLAW was subsequently informed that DOJ had only approximately \$10 million dollars to spend but that DOJ would make certain undertakings in order to get INSLAW to perform the contract at the \$10 million dollar level. (Hamilton, T. 129-130; PX 19) The negotiation memorandum

prepared at the time of the negotiations shows that INSLAW's proposed costs were reduced as a result of lengthy and detailed negotiations. (PX 19)

146. First DOJ stated that it would be willing to make certain timely contributions of manpower in the form of PROMIS system managers during the implementation phase to reduce the cost of the overall effort to the budgeted amount. (Hamilton, T. 129-130; PX 19)^{18/}

147. Next DOJ assured INSLAW that it would adhere to the schedule for procuring the government furnished equipment, i.e., computers and word processors, essential to timely contract performance. (Hamilton, T. 193)^{19/} Third, DOJ assured INSLAW that it would timely make available, which it frequently failed to do, the U.S. Attorney's Office personnel necessary to enable INSLAW to ascertain individual office procedures and requirements. (Hamilton, T. 194; see PX 225a, Holton, T. 1118-1119) Finally, DOJ represented to INSLAW that there would be limits on the variances in requirements among the various offices. (Hamilton, T. 195) This was the only commitment DOJ was able to fulfill. (Hamilton, T. 195) On the

^{18/} In general, DOJ frequently failed to provide these PROMIS systems managers when INSLAW began implementing PROMIS at U.S. Attorney's Offices. (Hamilton, T. 130)

^{19/} DOJ failed to meet this condition by failing to procure the word processing equipment until the 11th month of the contract when the contract called for on-site installation in the 4th month of the contract. (Hamilton, T. 193) As to the computer equipment, DOJ ran into substantial problems and delays with the General Services Administration in constructing the computer facilities. (Hamilton, T. 194)

basis of these representations and negotiations, INSLAW agreed to a three year cost-plus incentive fee contract with a target price not to exceed \$9.612 million. (Hamilton, T. 130; PX 18; PX 19; PX 20)

148. Contract No. JTVUSA-82-C-0074 ("PROMIS Contract") to implement and install Enhanced PROMIS was awarded to INSLAW on March 16, 1982. (Answer ¶14) The contract was on a cost-plus basis which was very similar to the Institute's prior contracts with LEA except for the addition of an incentive fee, and except that the 1982 implementation contract was by far the largest government contract with which INSLAW had ever been involved. (Hamilton, T. 130)

149. INSLAW did not participate in the drafting of the statement of work contained in the contract which described the nature and type of services to be performed under the competitive procurement contract. (Rugh, T. 1512; Hamilton, T. 2599) In any event, the major issue here is not over rights to what was delivered under the contract, but over rights to what was delivered beyond the contract.

C. NATURE AND TERMS OF THE PROMIS CONTRACT

150. The contract between INSLAW and DOJ involved two separate, severable and clearly distinguishable tasks:

1. To create, generate and implement software to be used on computers at twenty designated larger U.S. Attorney's Offices (with an option, admittedly never exercised, to expand this use, to up to thirty offices).

2. To create, generate and implement a different kind of software to be used on specified word processing equipment at some seventy-four smaller U.S. Attorney's Offices. (PX 17)

Thus, Paragraph 1.2 of the contract provides in part:

- 1.2 The Contractor shall implement PROMIS software and procedures as modified for the U.S. Attorney's environment on Government furnished mini-computers located in the larger U.S. Attorneys' Offices. Case tracking systems that have been developed to operate on Government furnished word processing equipment shall be installed in the smaller U.S. Attorneys' Offices. . . .

151. The parties clearly understood that these were separate tasks, and required the development and creation by INSLAW of two different and distinguishable kinds of software, each to be implemented only within the designated types of offices specified in the contract for that particular kind of software. (PX 324 [Brewer] at pp. 215-217; Snider 54-56; Gizzarelli, T. 479, 488, 494-495; PX 341 [Tyson] at p. 41; Hamilton, T. 110-111, 115, 132-134; Merrill, T. 770-771)

152. The software generated for the twenty larger computer-site offices, as specified in the contract, was to be used only at those offices and the word processing type of software to be developed and created by INSLAW was to be used only at the seventy-four smaller offices. (Hamilton, T. 132-134; Merrill, T. 764; Gizzarelli, T. 488, 497-499; PX 324 [Brewer] at pp. 215-216) At no time during any meeting,

either before or after the contract was signed, did anyone from DOJ inform INSLAW that DOJ believed that the computer based software could be used beyond these 20 offices. (Merrill, T. 770; Hamilton, T. 134) The contract did provide, however, that DOJ could extend the implementation of computer-based PROMIS to an additional 10 offices at an added price which the contract specified (and the parties understood) would be negotiated between the parties. (Hamilton, T. 124; PX 17; Merrill, T. 769-770; Gizzarelli, T. 496-499; PX 324 [Brewer] at pp. 215-216)

153. In effect, it was as if there were two contracts calling for two types of software to be delivered to two types of offices, a fact clearly understood by DOJ. (Hamilton, T. 110-111, 132-134; Merrill, T. 764; Gizzarelli, T. 488, 494, 497-499)

When DOJ unilaterally terminated the word processing part of the contract for the convenience of the Government, the 74 word processing offices dropped out, and all that remained was the 20 offices that were to receive the computer-based version of PROMIS (plus the never-exercised option to extend the latter version to ten additional offices at additional cost).

154. The computer-based version of PROMIS called for under the March 1982 contract was the Pilot Project PROMIS plus the five enhancements developed under a contract with DOJ's Bureau of Justice Statistics. (Hamilton, T. 114; Merrill, T. 764-765; Gizzarelli, T. 483-484, 598; Rugh, T. 1428-1429)

155. None of INSLAW's privately financed enhancements was to be delivered to DOJ under the PROMIS contract of March 1982, or under any other federal contract. (Hamilton, T. 115; Gizzarelli, T. 595) More particularly, the PROMIS contract gave DOJ no right to use these proprietary enhancements. There was no confusion expressed by any representative of DOJ at meetings in 1982 and 1983 as to what was to be delivered under the PROMIS Contract. (Merrill, T. 765, 2603-2604) ^{20/}

156. The word processing software for case-tracking called for by the contract required taking the word processing software previously developed by INSLAW for use on EOUSA's Lanier word processing machines and altering it to run on different government-furnished word processing machines chosen by DOJ for the 74 smaller U.S. Attorney's Offices. (Hamilton, T. 133-134)

VI. BREWER'S STRATEGY FOR THE RUINATION OF INSLAW

A. BREWER INFORMS HIS EOUSA/PROMIS PROJECT TEAM ABOUT HIS OPINIONS OF HAMILTON

157. Subsequent to joining EOUSA, Brewer's opinions about Hamilton became even more negative. (Gizzarelli, T. 477,

^{20/} While the PROMIS Contract did have a maintenance clause which required INSLAW to maintain the software in "operational, error-free" condition, this provision did not require INSLAW to deliver Enhanced PROMIS to DOJ. (Merrill, T. 849-852) INSLAW was required only to correct any errors relevant to U.S. Attorneys and reported by EOUSA. (Merrill, T. 848-850; Hamilton, T. 2600) This provision did not require INSLAW to correct errors reported by persons other than EOUSA. (Merrill, T. 850-851; Hamilton, T. 2600)

500-501, 522; PX 324 [Brewer] at pp. 86-87) During the course of the PROMIS Project, Brewer conveyed these opinions about Hamilton to his subordinates and superiors at EOUSA. (PX 324 [Brewer] at pp. 82-87, Brewer, T. 1659-1660) Clearly, Brewer was biased against Hamilton for having been dismissed by Hamilton from the Institute. (Gizzarelli, T. 501)

158. In particular, Brewer informed others at EOUSA that Hamilton was "crazy," that he had a "very, very distorted view of the world," that he was not "realistic" and that he was "mentally defective." (PX 324 [Brewer] at pp. 82-84; Brewer, T. 1659) By these types of comments from the head of the project team, Brewer in essence "poisoned the well at DOJ" against INSLAW. (Gizzarelli, T. 522)

159. In a prophetic memorandum to his INSLAW superior dated July 1, 1982, just 3-1/2 months after the start of the 3-year PROMIS contract, Gizzarelli noted that Brewer had made no secret of his dislike for Hamilton and that in his present position he was able to demonstrate his dislike. (PX 34) Although Hamilton had theretofore kept his distance from the project, Gizzarelli forecast that Brewer:

will escalate the level of controversy until he draws Bill into the project, at which time he will be able to 'lord it over him' and show who's boss.

I don't think Brick will ever be at peace with his feelings about Bill and, therefore, with us." (PX 34)

160. Brewer's attitude in this regard was openly manifested by his negative comments about Hamilton and INSLAW

as well as EOUSA's imposition of increasingly more burdensome administrative tasks (e.g., greatly increased financial and contract reporting requirements and advance permission for contract travel), which previously had not been required in INSLAW's contracts with DOJ. (Gizzarelli, T. 522-526) These burdens were added by DOJ without explanation. (Gizzarelli, T. 524-525) In addition, Brewer personally assigned an EOUSA employee who was totally inexperienced in computerization or case management to accompany, and ultimately to harass, INSLAW employees making site visits to U.S. Attorney's Offices. (Gizzarelli, T. 525)

161. Immediately after assuming his position as PROMIS Project Manager, Brewer also conducted an inquiry about other contracts INSLAW had with DOJ with the intent of trying to scuttle as many of these contracts as possible, ^{in the} ~~knowing~~ that the result of this activity would be to cut off INSLAW's funding and cash flow, and thereby drive INSLAW out of business.

B. INSLAW'S INITIAL PROBLEMS WITH DOJ

1. INSLAW'S Decision To Market Enhanced PROMIS And Brewer's Response To These Plans

162. In April 1982, INSLAW formally notified DOJ of its intent to market Enhanced PROMIS as a fee-generating product to public and private sector customers. (Hamilton, T. 134-136; Merrill, T. 775) In this connection, Roderick M. Hills, an attorney for INSLAW, wrote to Associate Deputy Attorney General Stanley E. Morris, enclosing a memorandum written by Hamilton (with his counsel's assistance) describing

the origin and financing of Old PROMIS, INSLAW's efforts to substantially improve the program utilizing private funds, and the need to market such privately-financed enhancements. (PX 21) Hamilton's memorandum also recited the written recommendations of DOJ task forces under both the Carter and Reagan Administrations that some way should be found to perpetuate the PROMIS software for the benefit of state and local justice when federal financial support ended. (PX 21)

163. Hill's letter solicited any questions or objections that DOJ had to INSLAW's plans. (PX 21) In essence, this inquiry was intended to provide advance notice to DOJ as to INSLAW's plans and to obtain a "sign-off" letter from DOJ to respond to concerns raised by IBM which at that time was considering a joint marketing agreement with INSLAW. (Rogers, T. 422-424; Hamilton, T. 277) The purpose of the "sign-off" letter, from INSLAW's perspective, was to give INSLAW assurance that DOJ understood what INSLAW was proposing to do, that it agreed with INSLAW's legal position, and that it would take no affirmative action to disrupt or impede INSLAW's marketing efforts. (Rogers, T. 444-445)

164. INSLAW's notice to DOJ was received by Brewer on or about April 13, 1982. (PX 22; Brewer, T. 1668)

165. This plan obviously infuriated Brewer. (Gizzarelli, T. 500-501; Brewer, T. 1666; Sherzer, T. 967-969) According to Videnieks' contemporaneous handwritten notes, on the very next day, April 14, 1982, a PROMIS Project Team meeting was held, at which Hamilton's "scurrilous" memorandum

the origin and financing of Old PROMIS, INSLAW's efforts to substantially improve the program utilizing private funds, and the need to market such privately-financed enhancements. (PX 21) Hamilton's memorandum also recited the written recommendations of DOJ task forces under both the Carter and Reagan Administrations that some way should be found to perpetuate the PROMIS software for the benefit of state and local justice when federal financial support ended. (PX 21)

163. Hill's letter solicited any questions or objections that DOJ had to INSLAW's plans. (PX 21) In essence, this inquiry was intended to provide advance notice to DOJ as to INSLAW's plans and to obtain a "sign-off" letter from DOJ to respond to concerns raised by IBM which at that time was considering a joint marketing agreement with INSLAW. (Rogers, T. 422-424; Hamilton, T. 277) The purpose of the "sign-off" letter, from INSLAW's perspective, was to give INSLAW assurance that DOJ understood what INSLAW was proposing to do, that it agreed with INSLAW's legal position, and that it would take no affirmative action to disrupt or impede INSLAW's marketing efforts. (Rogers, T. 444-445)

164. INSLAW's notice to DOJ was received by Brewer on or about April 13, 1982. (PX 22; Brewer, T. 1668)

165. This plan obviously infuriated Brewer. (Gizzarelli, T. 500-501; Brewer, T. 1666; Sherzer, T. 967-969) According to Videnieks' contemporaneous handwritten notes, on the very next day, April 14, 1982, a PROMIS Project Team meeting was held, at which Hamilton's "scurrilous" memorandum

(PX 23; PX 26; Brewer, T. 1668) was a major subject of discussion. The notes reveal that, in particular, Brewer actively considered terminating for the Government's convenience the month-old PROMIS Contract in retaliation for INSLAW's letter to Morris. (Brewer, T. 1673; PX 23) At that time Videnieks advised against it. In his testimony at trial, Brewer's deputy, Rugh, acknowledged that such a termination at that time would have been "ludicrous." (Rugh, T. 1471; Brewer, T. 1673; PX 23) No resolution was reached at that time. (Brewer, T. 1673; PX 23) This Court finds and concludes that the sole reason that such termination was not carried through at ~~this~~^{that} time was that it was ludicrous and absurd, as all of the government witnesses testified. In addition, Brewer discussed reprisals against INSLAW on its several other contracts with DOJ, one of which was the BUS contract for specific PROMIS enhancement development work which was not part of the PROMIS enhancements claimed as proprietary by INSLAW. (Hamilton, T. 114; PX 24)

All of the DOJ witnesses who attended the April 14, 1982 meeting professed a total lack of memory about it. They testified they had no recollection of any such meeting. This Court disbelieves that testimony. None of them could offer any credible explanation, or indeed any explanation, of the meaning of Videnieks' handwritten notes other than what this Court finds to be their meaning in this Finding of Fact No. 165. These notes constitute a "smoking gun" that clearly evidences Brewer's intense bias against

INSLAW, his single-minded intent to drive INSLAW out of business, and Rugh's and Videnieks' complicity.

166. Another contract discussed at the April 14, 1982 meeting was awarded to INSLAW in 1981 by DOJ to perform a needs analysis and system design for PROMIS in the U.S. Attorney's office in the District of Columbia. (PX 324 [Brewer] at p. 122; Brewer, T. 1634, 1673; Hamilton, T. 141; PX 232) The authorized second phase of this contract would have been a PROMIS implementation effort by INSLAW at an estimated contract price of \$600,000. (PX 324 [Brewer] at pp. 123-124; Hamilton, T. 141-142) It was noted during the April 14th meeting that DOJ was undecided about whether to proceed with the contract's second phase and that Brewer and Rugh would meet with the District of Columbia's U.S. Attorney's Office staff to decide what would be done on the contract. (PX 23) It was further noted that cancellation of the authorized second phase would adversely affect INSLAW's ability to keep its overhead rate in line with EOUSA expectations. (PX 23)

167. Stating that he wanted to discuss the BJS contract with INSLAW, Brewer demanded a meeting with INSLAW for April 19, 1982. (PX 24; Brewer, T. 1638)

168. At the outset of the meeting on April 19, 1982, Brewer informed James Kelley, INSLAW's General Counsel, and Joyce Deroz that his concern on the BJS contract arose from the "scurrilous" memorandum written by Hamilton which was attached to INSLAW's April 2, 1982 notice to Morris of its plans to

market Enhanced PROMIS. (PX 25; PX 26; PX 324 [Brewer] at p. 137; Brewer, T. 1671)

169. As of this meeting, Brewer understood from Hamilton's memorandum that INSLAW was asserting its right to market Enhanced PROMIS as well as its ownership rights in Enhanced PROMIS. (PX 25; PX 324 [Brewer] at p. 141)

170. During the April 19, 1982 meeting, Brewer again referred to the Hamilton memo and launched into a very emotional, even belligerent, tirade. (PX 26; Brewer, T. 1639; Kelley, T. 1397)

171. During this part of the discussion of the Hamilton memo, Brewer made a number of specific statements regarding the memo. (PX 324 [Brewer] at p. 143) He stated that the Hamilton memo was unnecessary because in Brewer's view DOJ had already acknowledged INSLAW's right to sell Enhanced PROMIS. (PX 324 [Brewer] at pp. 144-145) Nevertheless, and despite the obvious inconsistency, it was Brewer's further understanding, he said, that while INSLAW had the right to sell Enhanced PROMIS, DOJ had unlimited rights to such software, including the right "to give it away" to those very public and private sector entities to which INSLAW would be attempting to market PROMIS. (PX 324 [Brewer] at pp. 146-147; Brewer, T. 1683-1684) DOJ has the audacity to contend that "[it] is in no way inconsistent" for INSLAW to have "the right to sell . . . PROMIS" at the same time that DOJ has "unlimited rights" to give PROMIS away to INSLAW's intended customers. (DRPFF 167)

172. Brewer also questioned INSLAW's ability to perform the PROMIS Contract and indicated that a number of people at DOJ were upset with INSLAW and that the Hamilton memo had caused all kinds of problems. (PX 26; PX 324 [Brewer] at pp. 172, 174-175) Brewer further questioned the quality and timeliness of INSLAW's work, citing the Illinois Criminal Justice Coordinating Council, the Michigan Prosecuting Attorneys' Association and others as sources of this information. (PX 26; PX 324 [Brewer] at pp. 175-176)

173. Finally, Brewer strongly challenged INSLAW's right to claim ownership of, and complete domain over, Enhanced PROMIS. (PX 26; PX 324 [Brewer] at p. 177)

174. Another matter of discussion by Brewer at the April 19, 1982 meeting was a supplemental request for payment from INSLAW in the amount of \$125,000 in regard to the BJS contract (PX 324 [Brewer] at pp. 141-142; Brewer, T. 1638, 1679; Hamilton, T. 144, 200). Brewer contacted the superior of the contracting officer on the BJS contract and asked that a "preliminary notice" of default be issued on the contract^{21/} as well as a reprimand to INSLAW for failing to comply with the "Limitation of Cost Clause." (PX 27) Subsequent to the meeting and at Brewer's insistence, INSLAW agreed to absorb this \$125,000 expense into the PROMIS Contract without increasing the total cost of the PROMIS Contract and without

^{21/} Notwithstanding, Brewer conceded on November 24, 1982, that there was no factual support for any allegation that INSLAW did not perform its best efforts on the BJS contract. (PX 45)

any additional payment under the BJS Contract. (PX 324 [Brewer] at pp. 276-278; Brewer, T. 1640; Hamilton, T. 145)^{22/}

175. Subsequent to the April 19, 1982 meeting, Brewer met with officials of the District of Columbia U.S. Attorney's Office to recommend that they not go forward with Phase II of the contract. (PX 232; PX 237; PX 324 [Brewer] at p. 123; Brewer, T. 1674) INSLAW was not formally notified of this decision until August 25, 1982, although it had successfully completed Phase I of the D.C. U.S. Attorney's Contract on May 31, 1982. (Hamilton, T. 142; PX 37; PX 38; PX 48) This formal notice was given just 13 days after INSLAW received a letter from Deputy Attorney General Stanley Morris dated August 11, 1982, which noted that INSLAW could assert proprietary rights to any privately financed PROMIS enhancements. (Hamilton, T. 138-140, 277; Merrill, T. 775-776; PX 36)

176. Brewer played a very important role in the decision not to go forward with Phase II of the D.C. U.S. Attorney's Office contract. (PX 232; PX 237; PX 324 [Brewer] at p. 124) Brewer identified the purported basis for this decision, in part, as his understanding that INSLAW was not able to perform because of the demands being made upon INSLAW under the PROMIS Contract, (PX 324 [Brewer] at pp. 124-125;

22/ Brewer misconstrued the BJS contract as a commitment to produce specified enhancements at a fixed price instead of a "best efforts" commitment for development of an unspecified number of enhancements within a cost-plus contract. (Hamilton, 257-258; Dero, T. 2460-2462)

Brewer, T. 1635), notwithstanding that the contract had been in effect only a few months.

177. Based on prior discussions with DOJ officials, INSLAW had been led to believe that it would be awarded Phase II of the contract and had planned upon \$600,000 of revenue for estimating its overhead rate for all of its DOJ contracts and grants. (Hamilton, T. 143-144; Merrill, T. 774) After the decision not to go forward with Phase II had been made, Brewer was informed by INSLAW's comptroller, Murray Hannon, that denial of the \$600,000 contract resulted in a precipitous increase in INSLAW's overhead within a few months of the decision, as Brewer had been forewarned would happen. (PX 324 [Brewer] at p. 125)

2. Morris' Recusal Of Brewer On The Proprietary Enhancements Issue

178. DOJ did not respond to INSLAW's April 2, 1982 inquiry until May 24, 1982. (PX 28) Although signed by Morris, the response letter had been drafted by Richard DeHaan with the assistance of Brewer and others. (PX 348 [DeHaan] at pp. 12-13) The response raised a number of the same complaints stated by Brewer during the April 19, 1982 meeting. (PX 28) First, it questioned the cost impact upon the PROMIS Contract from the marketing of Enhanced PROMIS. (PX 28) Second, the response took issue with INSLAW's claims of ownership rights in Enhanced PROMIS. (PX 28) The response concluded by directing INSLAW to Brewer for the submission of questions or proposals regarding these issues concerning the PROMIS Contract. (PX 28)

179. In an effort to assuage Morris' concerns, INSLAW's attorney, James Rogers, wrote to Morris on May 26, 1982 to explain the constituent elements of Enhanced PROMIS and to assure Morris that the program did not include any DOJ financed enhancements. (PX 29) These representations by Rogers were formulated in response to concerns expressed by DOJ. (Rogers, T. 431) Rogers thus understood that his representations were adequate to resolve Morris' concerns. (Rogers, T. 432) In a letter dated June 1, 1982, Morris responded that the Department would respond to INSLAW's request after careful review and analysis of the underlying legal and policy issues. (PX 31) INSLAW subsequently provided information to DOJ to assist DOJ's legal analysis of the enhancements issue. (PX 33)

180. During this time period, Rogers and Kelley met with Brewer concerning INSLAW's inquiry. (Rogers, T. 426-427) The purpose of the meeting was to give Brewer a briefing on INSLAW's plans and its need for a "sign-off" for IBM. (Rogers, T. 427) Brewer's response to this presentation was negative. (Rogers, T. 428) In fact, Brewer informed Rogers that he would not recommend that DOJ acquiesce in INSLAW's April 2, 1982 request for clarification. (PX 324 [Brewer] at pp. 169-171)

181. These statements by Brewer were fully consistent with views he shared with others on the PROMIS Project Team. (PX 324 [Brewer] at pp. 163-164) Brewer and Videnieks both shared the concern that Hamilton's April 1st memo was a "frontal assault" on the PROMIS Contract and an effort to

achieve a novation of that contract. (PX 324 [Brewer] at pp. 150-151) These and other such views were communicated to others at DOJ. (PX 324 [Brewer] at p. 151)

182. As a result of Brewer's vehement outbursts at the April 19th meeting and his subsequent statements of his negative opinions of INSLAW personnel, its attorneys and its plans for marketing Enhanced PROMIS, INSLAW complained to Morris and informed him that Brewer had previously "been asked to leave" by INSLAW's predecessor and had lost his impartiality. (Hamilton, T. 138; Rogers, T. 437) INSLAW requested that Brewer be removed from further participation in DOJ's consideration of INSLAW's inquiry. (Hamilton, T. 138)

183. Based on a statement made by Morris in a meeting or during a telephone conversation, Rogers understood that Morris was aware that Brewer had been fired by INSLAW, and had been recused on this issue. (Rogers, T. 437)

184. On or about May 27, 1982, Morris directed McWhorter, Tyson's deputy, that Brewer should be excluded from the proprietary enhancements issue. (PX 30; PX 324 [Brewer] at pp. 166-169) Brewer expressed recognition of Morris' action to Gizzarelli by stating that he had been taken out of the loop on enhancements. (Gizzarelli, T. 548) In this regard, Brewer believed that Hamilton was responsible for Morris' action and told Gizzarelli that Hamilton had "shot himself in the foot." (Gizzarelli, T. 548)

185. Despite this express direction from the Associate Deputy Attorney General at DOJ, Brewer continued to involve

himself in consideration of INSLAW's April 2nd inquiry on proprietary enhancements. (PX 330 [McWhorter] at pp. 46-51; PX 324 [Brewer] at pp. 456-458, 464; PX 348 [DeHaan] at pp. 22-24)

186. Tyson's deputy, McWhorter, who had been directed by Morris to "... take the point outside the Department on this subject" and to replace Brewer in this regard, did nothing to inhibit Brewer's involvement in the proprietary enhancements issue. (PX 330 [McWhorter] at pp. 48-51) Subsequent to this failure to act by McWhorter, Brewer purchased a \$4,000 "half-interest" in a condominium in Virginia owned by McWhorter which originally had been purchased for \$43,000. (PX 324 [Brewer] at p. 105; McWhorter, T. 1344-1345, 1352) Brewer purchased this half-interest from McWhorter because McWhorter was getting married and "needed cash". (PX 324 [Brewer] at p. 105; McWhorter, T. 1395) Brewer also acted as groomsman at McWhorter's wedding. (PX 324 [Brewer] at p. 106; McWhorter, T. 1345, 1352)

3. Brewer's Continued Involvement in DOJ's Consideration Of The Proprietary Enhancement Issue

187. The only effect that Morris' "removal" of Brewer had was to suggest to persons outside of DOJ that Brewer was no longer involved in the proprietary enhancements issue. (PX 330 [McWhorter] at pp. 46-51) As far as EOUSA was concerned, Brewer could and did remain very active in DOJ's consideration of this issue. (PX 330 [McWhorter] at pp. 46-51)

188. Subsequent to his purported "removal" by Morris, Brewer repeatedly stated his opinion that INSLAW had no ownership or other rights in Enhanced PROMIS except for those specifically permitted under his view of the PROMIS Contract. (PX 324 [Brewer] at pp. 145-148, 157-161)

189. Despite Brewer's efforts to influence DOJ's response to the INSLAW inquiry, a response was sent to INSLAW by letter dated August 11, 1982 from Morris to INSLAW's attorney, James Rogers. (PX 36) This letter acknowledged that INSLAW had the right to assert whatever proprietary rights it had in Enhanced PROMIS to the extent the enhancements contained in the program had been privately financed. (PX 36; Rogers, T. 435) This letter further was consistent with the legal opinions on the enhancements issue rendered by INSLAW's attorneys. (PX 35)

190. Rogers understood that the Morris August 11 letter meant that if the representations stated in his letter of May 26, 1982 (which had been requested by Morris) were true, then DOJ did not have any rights that would inhibit or preclude INSLAW from asserting its rights, nor would DOJ challenge the assertion of such rights by INSLAW. (Rogers, T. 435, 437-438) Rogers viewed the Morris August 11 letter as providing the "sign-off" that INSLAW was seeking. (Rogers, T. 434) More particularly, Rogers drew the inference from the Morris letter that DOJ claimed no proprietary rights in the PROMIS 82 software. (Rogers, T. 435)

191. In this regard, Rogers understood that Morris did not attempt to limit the boundaries of INSLAW's proprietary rights and by implication did limit the extent of DOJ's rights based on the legal principle that every right has a correlative duty. (Rogers, T. 448)

192. Upon receipt of the Morris letter, INSLAW submitted it to IBM in connection with INSLAW's effort to negotiate a co-marketing contract with IBM. (Hamilton, T. 139) In this regard, IBM had requested evidence of DOJ's consent to INSLAW's marketing plans for Enhanced PROMIS and accepted the Morris letter as evidence of the requested approval. (Hamilton, T. 139-140; Rogers, T. 436) Because of the DOJ's and LEAA's explicit descriptions of old PROMIS as being in the public domain, neither INSLAW nor IBM had any significant concern in 1982 that the government would suddenly attempt to enforce any restrictive language in INSLAW's previous government contracts with respect to INSLAW's ability to market and enhance PROMIS, and that was not a factor underlying IBM's request for a letter from DOJ. (Hamilton, T. 267-269; see also PX 35) Thereafter, IBM entered into the co-marketing agreement with INSLAW. (Hamilton, T. 140)

193. Upon seeing the Morris letter of August 11, 1982, Brewer told people at DOJ that Morris' decision was incorrect. (PX 324 [Brewer] at pp. 153-154) Brewer believed that the Morris letter failed to resolve the questions raised in INSLAW's April 2nd inquiry. (PX 324 [Brewer] at p. 160) Despite the Morris letter, Brewer's view continued to be that

DOJ had an absolute right to any enhancement of PROMIS delivered under the PROMIS contract. (PX 324 [Brewer] at pp. 160-161) McWhorter went so far as to call the Morris letter a "rip-off" of the government. (PX 324 [Brewer] at p. 154)

4. Brewer's Strategy For The Ruination Of INSLAW

194. On September 10, 1982, Brewer requested Tyson to seek Rooney's approval for assigning Videnieks essentially full-time as contracting officer on the INSLAW contract. (PX 39) Brewer's basis for this request was "... that the only way to maintain our schedule within budget is to vigorously monitor INSLAW's efforts". Brewer's request was granted. (PX 324 [Brewer] at pp. 102-105; Brewer, T. 1606-1607)

195. After Videnieks' assignment as essentially full-time PROMIS Contracting Officer, he began playing an even more significant role than previously in the administration of the contract.^{23/} (PX 324 [Brewer] at pp. 111-114; Brewer, T. 1607) His first act in that regard was a letter to INSLAW, dated November 10, 1982, which alleged that INSLAW was in default of the advance payments clause of the PROMIS Contract. (PX 42; PX 43) The controversy over the advance payments

^{23/} Mr. Videnieks played a significant role in the administration of the 1982 implementation long before it was even awarded. He issued the solicitation, was the government's representative during the proposal stage of the contract, was the government's chief negotiator during the negotiation phase and served as the contracting officer from the moment the contract was signed. (Videnieks, T. 1806-07; PX 13-15; see DPFF 21)

clause was another effort to starve INSLAW of working capital and was further evidence of Brewer's continuing hostility and bias against INSLAW, and his total lack of impartiality.

196. The advance payments clause did not permit INSLAW to receive payments in advance of the completion of specified work (PX 324 [Brewer] at p. 189; Hamilton, T. 145-147; Sherzer, T. 955); rather, it was intended simply to assist under-capitalized companies, such as INSLAW, by providing immediate payment for work performed. (PX 324 [Brewer] at p. 189; Hamilton, T. 145-147; Sherzer, T. 955) This is as opposed to the usual format of DOJ payments whereby a contractor is paid 60 to 90 days after specified work is completed. (PX 324 [Brewer] at pp. 189-190; Hamilton, T. 145-146)

197. As of this time, DOJ, and particularly Brewer, were well aware of INSLAW's financial position and were equally well aware of the potential for harm to INSLAW from delayed payments on the PROMIS Contract. (PX 324 [Brewer] at pp. 188-190, 248; PX 342 [Videnieks] at pp. 184, 186-188)

198. Brewer's stated reason for considering terminating INSLAW's advance payment account was that a loan INSLAW had with the Bank of Bethesda, pursuant to which a lien was placed on payments received by INSLAW from the account (not the account itself), was contrary to the contract and placed the government in financial risk. (PX 324 [Brewer] at p. 228) INSLAW was in technical violation of the advance payment clause

of the contract, but the Government clearly was not placed in any financial risk as a result of this technical violation.

199. Indeed, notwithstanding this expressed concern, DOJ auditors concluded that the Bank of Bethesda loan and lien, in reality, presented no financial risk to the government. (PX 345 [Whitely] at pp. 36-38, 40-44; Whitely, T. 1673-1764; Hamilton, T. 166-167)

200. Brewer and Videnieks were also purportedly concerned about a substantial deterioration in the financial condition of INSLAW. (PX 324 [Brewer] at pp. 230-233; Brewer, T. 1630; PX 342 [Videnieks] at p. 208; Hamilton, T. 162-165) In addition, they stated that they were concerned about the possibility that fraudulent accounting had been practiced by INSLAW. (PX 324 [Brewer] at pp. 230-233; Brewer, T. 1630; PX 342 [Videnieks] at p. 208; Hamilton, T. 162-165)^{24/}

201. Despite these expressed concerns neither Brewer nor Videnieks could identify any evidence which led them to believe that INSLAW's financial condition had substantially deteriorated since the award of the PROMIS contract in March

^{24/} This concern was totally fallacious because it related to alleged improper accounting by INSLAW for the purchase of software from its Irish subsidiary, the accounting treatment for which INSLAW's outside auditor, Arthur Young & Co., had reviewed and had approved. (Hamilton, T. 164-165) Moreover, DOJ's attempts at trial to cast doubt on INSLAW's client billing practices with respect to the BJS contract were demonstrated to be wholly without merit. (Deroy, T. 2464-2469)

1982, nor any evidence of any fraud.^{25/} (PX 324 (Brewer) at pp. 232-233; 241-245; Brewer, T. 1630; Videnieks, 207-208)

202. Brewer and Videnieks were mistaken in their assumption that INSLAW's financial condition had deteriorated during the latter half of 1982; INSLAW was much stronger in December 1982 than at the time the PROMIS contract began. (Hamilton, T. 162) In fact, during that period, INSLAW was able to increase a previously existing line of credit of

25/ This Court rejects DOJ's contention that in 1982 the Government's auditor Whitely determined that INSLAW was insolvent and so advised Videnieks. Neither Brewer nor Videnieks at their depositions could identify any evidence to demonstrate a substantial deterioration in INSLAW's financial condition between the date of the contract and the end of 1982. (See PPF 197-199) At no time did Whitely prepare a written report or any other document which detailed, or even alluded to, his alleged conclusions about INSLAW's purported "insolvency" (Whitely, T. 1781-1782), nor did he refer to this subject at any time during the entirety of his pre-trial deposition. Additionally, Whitely's in-court testimony concerning the alleged insolvency of INSLAW as of year-end 1982 also ~~was~~ contradicted by the testimony of his successor, Ms. Schacht, who could recall no reference to such purported insolvency in the DOJ audit files nor any discussions on this subject with DOJ's auditing group. (Schacht, T. 2452) Indeed, Mr. Whitely's conclusions in this regard, particularly concerning the Irish subsidiary receivable and the capitalization of software development costs, are directly contrary to the considered opinion of Arthur Young & Co., a recognized independent international auditing firm, which gave INSLAW, a "clean," unqualified audit opinion as to its financial condition, and itself was the source of INSLAW's accounting treatment of its capitalization. (Whitely, T. 1777-1779)

The Court is forced to conclude that Whitely's financial assessment of INSLAW was "manufactured" solely for use at trial to rebut the otherwise overwhelming evidence supporting the conclusion that the acts of Brewer, Rugh and Videnieks were based upon the known false pretext found in Brewer's December 9 memorandum (PX 49), and was not Whitely's view in December 1982.

\$700,000 with First American Bank to a \$1.2 million line of credit from the Bank of Bethesda. (Hamilton, T. 159; Merrill, T. 799) In addition, between August and December 1982, INSLAW entered into the co-marketing agreement with IBM. (Hamilton, T. 160; Merrill, T. 799) Perhaps most important is the fact that INSLAW had obtained the PROMIS contract, and prospects were strong for successful completion of the contract. (Hamilton, T. 160-161; Sherzer, T. 958-959)

203. Notwithstanding the evidence to the contrary, Brewer informed Tyson, Director of EOUSA, about these same unsupported concerns. (PX 49; Hamilton, T. 156-157) In a December 9, 1982 memo, Brewer raised the following issues:

- a. the prospect of INSLAW's bankruptcy;
- b. the possible need for in-house EOUSA personnel to take over the PROMIS project;
- c. substantial questions of fraud being raised by INSLAW's accounting practices;
- d. the need for close auditing review of INSLAW's costs, particularly overhead and computer center costs; and
- e. the prospect of terminating the PROMIS Contract. (PX 49; Hamilton, T. 156-156)

204. The December 9 memo also expressly detailed EOUSA's commencement of planning for carrying on the EOUSA Project in-house, using EOUSA employees "... In the event of trouble" and stated that DOJ had "demanded, as is our right, from INSLAW copies of all software documentation" (PX 49) This planning was not disclosed at any time by DOJ to

INSLAW. (Hamilton, T. 163) Had this planning been disclosed to INSLAW, INSLAW would not have turned its software over to DOJ pursuant to Modification 12. (Hamilton, T. 165-166)

205. The December 9, 1982 Brewer memo was based on several fundamental misconceptions. First, INSLAW had not incurred \$975,000 of additional bank debt, but \$275,000, and the additional borrowing was necessary to defray partially \$344,000 that DOJ then owed INSLAW for its time sharing services. (Hamilton, T. 157-158) Second, Brewer misconstrued the Advance Payments provision of the contract as a mechanism for "payment-in-advance" when it was merely a contractual procedure for DOJ's timely payment of INSLAW's vouchers for work already completed. (Hamilton, T. 158) Third, Brewer erroneously concluded that INSLAW had "reprogrammed" \$100,000 in DOJ's contributions to the INSLAW employee profit-sharing plan because INSLAW had not yet deposited the annual contribution, when, in fact, the deposit was not yet due and owing. (Hamilton, T. 158-159) Fourth, Brewer incorrectly concluded that the nature of INSLAW's indebtedness had become "desperate" by December 1982, when, in fact, INSLAW believed it had just obtained DOJ's "sign-off" to its rights to license its privately-financed enhancements, had established its first sales and marketing unit and had consummated a national co-marketing arrangement with IBM for the public sector. (Hamilton, T. 159-161) Fifth, Brewer confused a version of PROMIS developed under the Pilot contract using a COBOL compiler that the hardware manufacturer (PRIME) had

subsequently discontinued, with a version developed by INSLAW's European subsidiary based on current compiler technology; as a consequence of his lack of understanding, Brewer had suggested possible fraudulent accounting practices at INSLAW. (Hamilton, T. 162-165) INSLAW's independent public accountants had, in fact, reviewed and approved the accounting transactions. (Hamilton, T. 165)

206. These issues formed the basis for Brewer's effort to ruin INSLAW and to bring about DOJ's wrongful use of INSLAW's Enhanced PROMIS software. (PX 49)

C. BREWER'S RENEWAL OF THE PROPRIETARY ENHANCEMENTS ISSUE AND TERMINATION OF ADVANCE PAYMENTS

207. At the same time that Brewer was seeking termination of the advance payment account, DOJ demanded in a letter dated November 19, 1982 that INSLAW produce to DOJ "... all computer programs and supporting documentation developed for or relating to this contract." (PX 44) This demand was repeated verbatim in a letter dated December 6, 1982 from Videnieks to INSLAW. (PX 46; Videnieks, T. 1810-1811, 1833-1834)

208. INSLAW understood these requests to require production of the source code and the object code for all of the software developed for the U.S. Attorney's offices, including both the computer version and the word processing version. (Hamilton, T. 152, 2583-2588; Merrill, T. 782, 784-785) These requests required INSLAW to produce software codes for the enhancements otherwise not deliverable under the

contract. (Hamilton, T. 152, 2583-2588; Merrill, T. 782, 784-785) With these source and object codes, as well as the other material sought by DOJ, DOJ was in a position to sell the software, to give it away or to commission other private companies to take it, and to further develop it without normal costs associated with this process. (Hamilton, T. 152-153)

209. Until DOJ selected and procured from other sources the minicomputer hardware that would be used to run the contracted-for minicomputer PROMIS software, INSLAW agreed to provide the largest U.S. Attorney's Offices with temporary access to PROMIS in a time-sharing arrangement. (PX 17 Article XXVI, Statement of Work at ¶¶ 3.1.1, 3.2.2.4, 3.2.5) Those U.S. Attorney's Offices would be tied into INSLAW's computers on an interim basis, to obtain the benefits of PROMIS automation until DOJ was ready to actually implement the contracted-for version of PROMIS on site. INSLAW used its proprietary VAX version of PROMIS for this temporary accommodation to DOJ, in which other proprietary enhancements also had been included. There was no contractual requirement that INSLAW provide DOJ with this time-sharing software, and therefore INSLAW had, quite properly, not anticipated that DOJ would demand the underlying software which contained these proprietary enhancements.

210. When DOJ demanded that INSLAW turn over its time-sharing PROMIS software, DOJ still had not selected either the minicomputer or word processing hardware that would ultimately be used to run minicomputer PROMIS at the 20 larger

offices and the word processor-based case tracking software at the 74 smaller offices. Thus, DOJ was not at that time prepared to implement the version of PROMIS called for under the terms of the contract and, indeed, INSLAW could not prepare the contracted-for version of PROMIS for DOJ until DOJ had decided which minicomputer hardware to procure. Therefore, when DOJ used the pretense of threatened termination of advance payments as leverage to obtain the enhanced time-sharing software, it knowingly set out to obtain a version of PROMIS to which it was not entitled under the contract, and which DOJ understood contained proprietary enhancements belonging to INSLAW.

211. INSLAW made clear to DOJ and DOJ clearly understood that DOJ was demanding and receiving these proprietary enhancements only as a temporary accommodation until the contracted-for software was ready. However, INSLAW further informed DOJ and DOJ plainly understood that DOJ could choose to purchase rights to use the enhancements from INSLAW in the actual software to be delivered to DOJ. Thus, DOJ's situation here is analogous to that of a car buyer who has put in a purchase order for a stripped-down version of a car, for which the buyer will provide its own engine at a later date for installation by the car dealer. The dealer in the interim provides the buyer with another car, a top-of-the-line model, which the buyer agrees to test drive until the buyer's engine arrives for the stripped-down model, with the understanding that the buyer can then instead choose to purchase the

top-of-the-line model. What DOJ has done in this case is to drive off with the top of the line model, while refusing either to accept the lesser version or agree to pay for the better model.

212. DOJ's demands for PROMIS software tapes were initiated by Brewer, who engaged in regular conversations with his staff concerning INSLAW's alleged deteriorating financial condition and the alleged risk of financial loss by the government. (PX 324 [Brewer] at pp. 232-233, 292-293; PX 342 [Videnieks] at pp. 189-190) Brewer was instrumental in renewing the dispute with INSLAW concerning proprietary enhancements to PROMIS. (PX 52)

213. In a letter dated January 6, 1983, Brewer renewed the requests for copies of all PROMIS software and computer source codes. (PX 52)

214. At the same time that Brewer and Videnieks were demanding INSLAW's proprietary software, they were also moving ahead to suspend INSLAW's advance payments account, since they believed this threat would coerce INSLAW into "giving up the goods." (PX 50) As part of this effort, Videnieks in late 1982 or early 1983 prepared a briefing paper on "Discontinuation of Advance Payments". (PX 50; Videnieks, T. 1866-1867; PX 324 [Brewer] at pp. 244-245) The paper outlined four alternative "DOJ Alternatives," constituting scenarios of damage to INSLAW that might result from the contemplated discontinuation of the Advance Payments. (PX 50)

215. One possible ramification of discontinuation was recognized as being a slowdown of INSLAW's PROMIS contract effort. (PX 50) The solution set forth to this situation in PX 50 was a termination for default of the PROMIS contract with completion of the Project by in-house EOUSA personnel. The paper discussed the prospect of INSLAW's bankruptcy from discontinuation of Advance Payments and concluded that termination for default and in-house implementation could again be utilized. (PX 50) Even if the discontinuation had no impact on INSLAW's contract effort, the EOUSA paper recommended that DOJ file liens against INSLAW's property. (PX 50)

216. At a meeting on January 19 or 21, 1983 with DOJ's procurement staff, INSLAW complained about harassment by Contracting Officer Videnieks and by other PROMIS Project personnel. (PX 54)

217. On January 26, 1983, Videnieks gave INSLAW notice that the government intended to suspend the advance payment account based upon alleged breaches of certain PROMIS contract clauses. (PX 53)

218. At a meeting on February 4, 1983, INSLAW personnel including Hamilton, Merrill, Jim Dimm and Murray Hannon, as well as INSLAW's government contracts counsel, Harvey Sherzer, and its outside auditor, John Hozik, met with various DOJ officials, at their request, to discuss the advance payment issue. (Hamilton, T. 148; Merrill, T. 777-779) At the outset of the meeting, DOJ auditor Robert Whitely willingly acknowledged the lack of financial risk to the Government.

relating to INSLAW's advance payments account. (Hamilton, T. 167, 197-198; Merrill, T. 781; Sherzer, T. 954-956; Whitely, T. 1763-1764)

219. When discussion at the February 4, meeting turned to the proprietary enhancements issue, Brewer acknowledged that all the PROMIS contract called for was the pilot version plus the five BJS enhancements. (Hamilton, T. 154, 197)

220. Indeed, Hamilton offered to provide DOJ with the privately financed enhancements to PROMIS at no cost in order to resolve the proprietary rights dispute with DOJ. (Hamilton, T. 345-346; Merrill, T. 790; PX 67) In response to this proposal, William Snider said that INSLAW did not have to give its privately financed enhancements away at no cost in order to protect its proprietary rights. (Hamilton, T. 346; Merrill, T. 790-791) Snider added that this was not the way the Government did business. (Hamilton, T. 155-346; Merrill, T. 790) Significantly, Snider advised INSLAW that if DOJ wanted INSLAW's privately financed enhancements, DOJ would pay for them. (Hamilton, T. 155, 346; PX 336 [Snider] at p. 92) Brewer and Videnieks became quite angry with INSLAW and raised their voices in objection to INSLAW's positions as to proprietary enhancements. (Hamilton, T. 196; Merrill, T. 778) Videnieks also engaged in a very hostile discussion with INSLAW personnel concerning performance of the PROMIS contract. (PX 336 [Snider] at pp. 40, 46-50)

221. In response to a DOJ request for INSLAW's software, INSLAW stated that it would not release its

proprietary product to DOJ unless the data rights issue was finally resolved by DOJ agreeing to give protection to INSLAW as to any proprietary product that was turned over. (Hamilton, T. 153; PX 56; PX 67) In this regard, INSLAW explained that Morris had already recognized, and had given a "sign-off" on, INSLAW's rights to its privately-financed enhancements, and these enhancements made PROMIS a better product for the U.S. Attorneys. (Hamilton, T. 153-154)

222. Brewer responded to these comments with a remark about "[h]ow many times does the Department of Justice have to buy this software?" (Hamilton, T. 154)

223. Because of concerns raised at the February 4th meeting and the animus exhibited by certain government officials, INSLAW's attorney, Harvey Sherzer, wrote to DOJ on February 10, 1983. (PX 58; PX 59) In this letter, Sherzer observed that there was general agreement that INSLAW's performance under the PROMIS contract had been excellent and that any breach, however meaningless, had been inadvertent. (PX 58; PX 59) Sherzer did suggest, however, that DOJ might wish to consider a change of DOJ personnel on the PROMIS contract because of the "unfounded accusation[s] and hostility evidenced by [DOJ personnel] at the February 4 meeting." (PX 58; PX 59) In this regard, Sherzer strongly complained of the negative impacts of "an atmosphere of bias or retribution" at DOJ and questioned the propriety of seeking termination of advance payments and warned against "... anyone's personal

effort to seek retribution against INSLAW" (PX 58; PX 59)

224. Sherzer also stated that INSLAW's financial condition was not deteriorating, that in fact venture capitalists and investment bankers were interested in investing funds in INSLAW. (PX 58; PX 59) On this basis, Sherzer reasoned that the Government had less risk from the Advance Payments than it had had at the outset of the PROMIS Contract. (PX 58; PX 59)

225. Mr. Sherzer identified Brewer as the individual who exhibited such bias or "animus." (Sherzer, T. 965) Sherzer based this conclusion on derogatory comments made by Brewer against INSLAW and its president which went far beyond the boundaries of any particular contract dispute. (Sherzer, T. 965) Sherzer thought that Brewer was deeply resentful of INSLAW and Hamilton. (Sherzer, T. 967, 994)

226. DOJ's response to Sherzer's letter did not take issue with the merits of any of his contentions, but did inform INSLAW that it viewed the issues of advance payments and proprietary enhancements as interrelated. (PX 60) Moreover, it also informed INSLAW that if it did not expeditiously produce additional information with respect to INSLAW's proprietary enhancement claims, that Videnieks' decision on discontinuation of advance payments ". . . will be made without the benefit of additional input." (PX 60)

227. Brewer's deputy, Rugh, went so far as to perform a "programmatic risk analysis" related to an INSLAW

bankruptcy. (PX 65) The March 7, 1983 study stated that the mini-computer phase of the PROMIS Contract was "essentially on schedule" but that the word processing phase was behind schedule due to DOJ delays in the award of the hardware contract and limitations in the design of the pilot version of PROMIS. (PX 40; PX 65) In order to limit programmatic risk, Rugh recommended to Brewer and Videnieks that INSLAW's time-sharing and word processing software be placed in escrow. (PX 65)

228. Despite Brewer and Rugh's preoccupation with the issue of INSLAW's "imminent" bankruptcy in the Spring of 1983, three financial institutions, including the Wall Street investment bank of L.F. Rothschild, Unterberg and Towbin, invested approximately \$750,000 in INSLAW common stock in May 1983 after having valued INSLAW at \$9 million for investment purposes. (Hamilton, T. 201-202)

VII. BREWER'S USE OF MODIFICATION 12 "TO GET INSLAW'S GOODS"

A. NEGOTIATION OF MODIFICATION 12

229. The DOJ persisted in its attempts to interrelate resolution of the advance payments issue and INSLAW's assertion of proprietary rights in Enhanced PROMIS. (PX 62; PX 66) When it became clear to INSLAW in March 1983 that DOJ would not resolve the advance payment issue without first obtaining the PROMIS software, INSLAW proposed in a March 11, 1983 letter to DOJ that the parties enter into an escrow agreement pursuant to which DOJ would receive the software if, and only if, INSLAW

went into bankruptcy. (PX 68; Hamilton, T. 167-168; Brewer, T. 1693-1694; Merrill, T. 791) Brewer's and Videnieks' professed concern about INSLAW's financial viability was merely a smoke screen; such concerns would have been fully met by placing the PROMIS software in escrow with a third party. The only reason such an arrangement was not acceptable to DOJ was because it wanted to "get" INSLAW's "goods." This is further evident from the exchange of correspondence from Mr. Rugh whereby the Department having gotten the goods, pretended to find fault with INSLAW's methodology for proving private funding while refusing to divulge to INSLAW either any realistic purported defects in that methodology or any alternative methodology which would be acceptable to DOJ. DOJ thus took the tack designed to be the most harmful to INSLAW without any conceivable concomitant benefit to the Government other than the desire to get away with taking something without right.

230. Although certain DOJ personnel recommended INSLAW's third-party escrow proposal, it was rejected by Brewer and Videnieks, because they could not thereby immediately obtain the software. (PX 73) Videnieks and Brewer discussed this issue on or about March 28, 1983 and decided to propose a letter response to Sherzer indicating DOJ's intent "to back off [Advanced Payments] discontinuation and promising non-dissemination [of PROMIS software] in return for delivery of information demanded on 12/6" [PX 73] Videnieks prepared a draft of this letter which Brewer then rewrote [PX 73]. This

letter was submitted to William Snider, Administrative Counsel for Procurement, who previously had indicated his preference for a bilateral agreement between the parties embodied in a contract modification. (PX 73)

231. A March 28 memo further recounts that Videnieks was in full agreement with Brewer about the letter, indicating quite significantly "... why do you need signature if you got the goods?" (PX 73; Videnieks, T. 1837-1838)

232. Snider quickly responded to the Brewer/Videnieks proposal on March 29, "sharply disagreeing on this approach." (Videnieks, T. 1838) At this point, Brewer "forbade" Videnieks from entering into a "Mod" of the contract. (PX 73) ^{26/} Brewer did not want a bilateral agreement if he could "get the goods" without it. (Brewer, T. 1704-1705)

233. On April 5, 1983 Videnieks and Brewer had a telephone conversation in which Brewer told Videnieks that he would "protect" him from "backing down" to Sherzer and Hamilton. (PX 73) After this conversation, Videnieks checked with Snider and "MH" who confirmed that a contract modification protecting INSLAW's proprietary enhancements was a precondition to INSLAW's delivery of the software. (PX 73; Brewer,

^{26/} At trial, Brewer denied this fact three times. (Brewer, T. 1692, 1694, 1702) This was the only circumstance on which Videnieks could recall not following a Brewer guidance which would have resulted in a detriment to INSLAW. (Videnieks, T. 1859-1860, 1861) Even with this single exception, Videnieks acknowledged that the only reason he ignored Brewer's guidance is that DOJ's Administrative Counsel Snider applied pressure on Videnieks to proceed on the basis of a bilateral contract modification. (Videnieks, T. 1861-1862)

T. 1208) Brewer understood that INSLAW wanted such protection, and that INSLAW would remove any enhancements that DOJ did not want. (Brewer, T. 1708-1709)

234. DOJ's March 18, 1983 response to INSLAW's March 11 proposal dismissed the proposal of an escrow agreement, but did offer in consideration of "getting the goods" to agree not to disseminate or disclose the PROMIS software beyond EOUSA and the U.S. Attorney's offices enumerated in the PROMIS contract pending resolution and negotiation of the proprietary enhancements issue—"until the data rights of the parties to the contract are resolved." (PX 70; PX 71; Merrill, T. 792; Brewer, T. 1689-1690; Hamilton, T. 168) This proposal by Videnieks was basically the methodology proposed and discussed at the February 4, 1983 meeting. (Merrill, T. 792)

235. The March 18 letter also stated that once the "data rights" issue was resolved, DOJ would review INSLAW's proprietary enhancements to decide which (if any) enhancements DOJ desired to include in the Executive Office contract PROMIS software. (PX 70; PX 71)

236. Videnieks specifically stated in his March 18 letter that after the proprietary enhancements issue was resolved, DOJ:

... will review the effect of any enhancements which are determined to be proprietary, and then either direct INSLAW to delete those enhancements from the versions of PROMIS to be delivered under the contract or negotiate with INSLAW regarding the inclusion of those enhancements in that software. The Government would then either

destroy or return the "enhanced" versions of PROMIS in exchange for the Government PROMIS software including only those enhancements that should be included in the software. If this course of action is acceptable to INSLAW there would be no need for an escrow agreement. (PX 70; PX 71; Videnieks, T. 1813-1815)

237. The enhancements which DOJ did not want would be removed from the software delivered to the DOJ. (PX 70; PX 71; Brewer, T. 1690-1691, 1709; Hamilton, T. 330-331)

238. INSLAW understood from Videnieks' letter that it was necessary to resolve the issue of "proprietary enhancements" as soon as possible because INSLAW was scheduled to deliver software to the 20 largest U.S. Attorney's offices beginning in the Summer of 1983. (PX 73; Hamilton, T. 169) INSLAW also understood from Videnieks' letter that it was to identify the enhancements that had been privately financed, with evidence of the source of private funding, and an indication as to why the enhancements were not required to be furnished under the terms of the contract. (Hamilton, T. 170; PX 70; PX 71)

239. Most importantly, INSLAW understood from Videnieks' letter that DOJ would negotiate with INSLAW to purchase any privately financed enhancements that it desired to keep in the software deliverable under the contract. (Hamilton, T. 171; Merrill, T. 792-793; Gizzarelli, T. 534; Sherzer, T. 977-979; PX 341 [Tyson] at pp. 205-207, 212-214; PX 336 [Snider] at pp. 91-96; PX 70; PX 71)

240. As of the time of Videnieks' letter, INSLAW was fully prepared to delete any or all enhancements that DOJ indicated it did not desire pursuant to the process laid out in Videnieks' letter. (Hamilton, T. 172-173; Merrill, T. 793)

241. INSLAW accepted Videnieks' proposal in a letter dated March 23, 1983 from its attorney, Sherzer, to William Snider, DOJ's Administrative Counsel. (PX 72; Sherzer, T. 979) Sherzer accepted Snider's proposal that the agreement take the form of a modification to the PROMIS Contract and also stated his understanding that advance payments need not be stopped, since DOJ's alleged risk would be eliminated as a result of DOJ's receipt of INSLAW's PROMIS software. (PX 72)

242. On April 11, 1983, Modification 12 to the PROMIS Contract was executed between INSLAW and DOJ pursuant to which INSLAW delivered the requested information to DOJ upon consideration of DOJ's promise to limit dissemination and use of INSLAW's proprietary software and data. (Answer ¶17; PX 78; PX 83) The language of Modification 12 as to the specified information to be produced was basically the same wording as used in the Videnieks March 18, 1983 letter. (Merrill, T. 786; Videnieks, T. 1843-1844; PX 70; PX 71; PX 78) The March 18 Videnieks letter to INSLAW was actually drafted by Snider, who believed that Modification 12 must be read and understood in the context of the March 18, 1983 letter. (PX 336 [Snider] at pp. 91-96; Videnieks, T. 1842) Modification 12 required INSLAW to produce all computer programs and documentation for time-sharing, computer sites and for word processing.

(Merrill, T. 786; Sherzer, T. 980; Hamilton, T. 152, 2583-2588) DOJ never told INSLAW that it was not required to produce all of this under Modification 12 or that INSLAW was producing too much. (Merrill, T. 787)

243. The provisions of Modification 12 must be read consistently with the existing contract, the terms of which (Modification 12 unequivocally states) were not otherwise changed. (Gizzarelli, T. 535; Sherzer, T. 1030) Thus, DOJ's agreement not to disseminate or use the software beyond the 94 offices has to be read in the context of the two contract tasks. This means that the computer-based software would not be disseminated beyond the 20 designated larger offices for which this software was being created and developed, and the word processing software would not be disseminated beyond the 74 offices for which that type of software was being created and developed. (Merrill, T. 787-788; Hamilton, T. 177-178; Gizzarelli, T. 535) Modification 12 sought to effect delivery to DOJ of all computer programs developed under the contract, as well as INSLAW's proprietary enhancements then incorporated in the software. The statement of work defines the software for the word processing machines as computer programs, (Hamilton, T. 2583) and subparagraphs 3 and 5 of Modification 12 specify the delivery of software for operation on word processing machines (Hamilton, T. 2584-2586). In addition, Modification 12 was directly related to and fully embodies the process and intent of Videnieks' letter of

March 18, 1983 (Hamilton, T. 173; Gizzarelli, T. 535-536; Merrill, T. 793-794; PX 336 [Snider] at pp. 7, 90-96).

244. INSLAW understood that Modification 12 provided breathing room for the parties to resolve the proprietary enhancements issue and for DOJ to negotiate a payment or possibly some other form of consideration to INSLAW for any proprietary enhancements that DOJ desired to be kept in the PROMIS software. (Merrill, T. 787; Hamilton, T. 177; Sherzer, T. 978-979, 1027)

245. William Snider, Administrative Counsel for JMD and a prime negotiator of Modification 12, understood that it was intended to implement Videnieks' letter of March 18 and the intent to negotiate on proprietary enhancements stated in that letter. (PX 336 [Snider] at pp. 7, 90-96) In that regard, Snider further understood that if DOJ wanted INSLAW's proprietary enhancements, then it would pay INSLAW for such enhancements. (PX 336 [Snider] at pp. 91-96) Indeed, Snider had informed INSLAW representatives at a meeting prior to the execution of Modification 12 that DOJ would negotiate compensation to INSLAW for all such enhancements that DOJ wished to use. (Hamilton, T. 177; Sherzer, T. 977; Merrill, T. 790-791)

246. Brewer, however, had no intention to negotiate; indeed, Videnieks, Rugh and Brewer all testified that notwithstanding Modification 12 they had no understanding of any obligation on DOJ's part to negotiate with INSLAW concerning the time-sharing or any other PROMIS software.

(PX 324 [Brewer] at p. 163; Brewer, T. 1691-1693) Brewer had discussed his understanding of Modification 12 with a number of people at DOJ and his views in that regard were shared by Brewer's staff and by Videnieks. (PX 324 [Brewer] at pp. 163-164)

247. In furtherance of its obligations under Modification 12, INSLAW began delivery to DOJ of the source and object codes as well as other software-related material requested by DOJ, starting in April 1983 and continuing on in August 1983 with the VAX software as modified for the PRIME computer. (Hamilton, T. 173; Merrill, T. 786-787) Thus by the end of August 1983, INSLAW had provided all software, codes and documentation related to the mini-computer part of the PROMIS contract. (Hamilton, T. 175; Gizzarelli, T. 537)

248. INSLAW expressly understood that Modification 12 required the delivery of the word processing software. (Hamilton, T. 176; Merrill, T. 785-787) As word processing versions of the criminal and civil case tracking software were completed, INSLAW delivered them to DOJ pursuant to Modification 12. (Hamilton, T. 173, 2613-2615) The last module of word processing software delivered by INSLAW pursuant to Modification 12 was the debt collection program in January 1984. (Merrill, T. 785-787; Hamilton, T. 2587-2588)

B. BREWER, RUGH AND VIDENIEKS STYMIE INSLAW'S EFFORTS TO SUBSTANTIATE PROPRIETARY ENHANCEMENTS

249. Shortly after Modification 12 was executed, INSLAW provided DOJ with the information Videnieks had

requested concerning substantiation of INSLAW's proprietary enhancements. (PX 74; PX 75) On April 7, 1983, Videnieks demanded a clarification of the requested information to which INSLAW fully responded on April 12, 1983. (PX 76; PX 79) In its April 12 response, INSLAW provided written documentation that listed upgrades sewn into the software and certain "hook-on" subsystems, along with a rationale for concluding that these enhancements had been privately financed. (Hamilton, T. 180; Merrill, T. 794-797) INSLAW considered this to be a reasonable and satisfactory methodology for demonstrating the enhancements. (Hamilton, T. 180-181; Merrill, T. 794-797)

250. Videnieks responded on April 21, 1983 and grudgingly acknowledged that INSLAW had satisfactorily identified 251 enhancements, but dismissed INSLAW's showing as to the remaining 550 enhancements that INSLAW claimed. (PX 80) Videnieks gave INSLAW one week in which to supply more information. (PX 80)

251. In an effort to cure the deficiencies alleged by Videnieks, INSLAW's attorney Sherzer wrote to him on May 4, 1983 with a proposed methodology to perform further data accumulation which INSLAW believed would establish its claims, but which effort would be costly and time-consuming. (Hamilton, T. 182; PX 81) Sherzer also asked DOJ to either accept the methodology or to suggest whatever changes it wanted. (Hamilton, T. 182) In this letter, Sherzer also

indicated INSLAW's position that it could, in fact, copyright software "... developed at Government expense." (PX 81)^{27/}

252. In a telephone conversation on May 9, 1983 with Videnieks and Mike Snyder, Videnieks' COTR, Rugh reviewed the INSLAW May 4th letter. (PX 84) While concluding that INSLAW had not yet supported its claim of privately financed enhancements, Rugh believed that an acceptable methodology could be devised to do so. (PX 84) He proposed that Videnieks adopt one of these alternative responses:

- a) flat out denial of INSLAW's proposed methodology and a government decision that INSLAW had failed to substantiate its claims;
- b) a response that INSLAW's method is not acceptable and suggest an acceptable method; or
- c) a response that INSLAW has not substantiated its claim and ask INSLAW to resubstantiate without agreeing to a methodology. (PX 84)

253. Rugh also performed an analysis of INSLAW's submission which noted the purported deficiencies in the

27/ Brewer professed to think that INSLAW's position was spurious and never informed INSLAW that DOJ's counsel had agreed specifically with INSLAW's position. (Brewer, T. 1716) By Sherzer's May 4 letter, INSLAW requested DOJ's opinion in support of its position on the question of whether Enhanced PROMIS could be copyrighted and supplied in a memorandum dated April 26, 1983 to DOJ. (PX 81) On June 1, 1983, the Director of the Commercial Litigation Branch of DOJ's Civil Division issued a legal memorandum to Snider, JMD's Administrative Counsel, which agreed with INSLAW that copyright law does not prohibit a contractor from obtaining a copyright in software produced under a government contract. (PX 91) Despite this seeming unequivocal opinion, DOJ repeatedly deferred INSLAW's inquiries on the issue. (PX 93; PX 95)

submission and concluded that the proposed methodology was unacceptable. (PX 87; PX 88) DOJ never provided INSLAW with Rugh's analysis. (Rugh, T. 1498) Similarly, no one from DOJ ever approached INSLAW to discuss Rugh's analysis or to attempt to resolve the purported deficiencies described by Rugh. (Rugh, T. 1498-1502; Brewer, T. 1717; Videnieks, T. 1848) Rugh knew of no reason for withholding his analysis from INSLAW and Brewer admitted it was reasonable for INSLAW to ask the government either to accept the methodology or to propose alternatives. (PX 324 [Brewer] at p. 323; Rugh, T. 1513)

254. At no time during Rugh's analysis of INSLAW's proprietary enhancements did he inform Brewer that the endeavor was meaningless because such enhancements were called for and deliverable under the contract. (Brewer, T. 1711-1712) Similarly, at no time did Brewer ever inform INSLAW that its effort to substantiate the enhancements was unnecessary because such enhancements were called for under the contract. (Brewer, T. 1714-1715)

255. Rugh, Videnieks and Snyder all agreed that DOJ should not get involved with giving INSLAW advice as to how it could satisfy DOJ's request for substantiation of its enhancement "... since they made the claim proof (should be readily available)." (PX 84)

256. Brewer understood that there were several industry standard ways of documenting software development. (Brewer, T. 1713-1714) Although Brewer could not describe such industry standards, Brewer believed that Rugh was familiar with

them. (Brewer, T. 1730) Notwithstanding such purported knowledge, Rugh drafted a letter for Videnieks' signature which adopted his third alternative response rejecting INSLAW's methodology and refusing to provide INSLAW any guidance as to an acceptable methodology. (PX 82; PX 95; Brewer, T. 1713-1714)

257. Videnieks gave INSLAW an ultimatum of providing additional acceptable information by July 11, 1983 or DOJ would be forced to conclude that all of INSLAW's claimed enhancements were developed within the scope of government contracts. (PX 95) Videnieks signed the letter and sent it to INSLAW on June 10, 1983. (PX 95)

258. Sherzer believed that since INSLAW had provided DOJ with a methodology, and DOJ had complete access to INSLAW's total operations to verify INSLAW's assertion, DOJ had an affirmative obligation to propose an alternative methodology. (Sherzer, T. 1033-1034)

259. Sherzer and Gizzarelli called Videnieks in June 1983 to determine what form of proof would satisfy DOJ. (DX 79; Gizzarelli, T. 536; Sherzer, T. 984) Videnieks declined to comment on this issue and stated that it was up to INSLAW to determine the method and provide the proof. (DX 79; Sherzer, T. 985-986; Gizzarelli, T. 536; Hamilton, T. 181-183) In reality, DOJ knew that INSLAW could not choose whatever method of proof INSLAW wished; indeed, DOJ had already rejected two levels of detailed proofs and refused to consider acceptable the proposed third method. (Hamilton, T. 183; Merrill, T. 794-798; PX 76, 80, 95)

260. Sherzer concluded from this conversation, and it is obvious from the record as a whole, that DOJ would never be satisfied with any proof submitted by INSLAW to support its proprietary enhancement claims. (DX 79; Hamilton, T. 185; Sherzer, T. 989; Merrill, T. 797-798) Sherzer also concluded that DOJ intended to assert and maintain the position that the software belongs to the government in its entirety. (DX 79) Sherzer's final conclusion was that INSLAW had no choice but to contest the proprietary enhancements issue as far as was necessary. (DX 79)

261. Gizzarelli correctly believed Videnieks to be engaged in a game of "cat and mouse," that Videnieks knew of an acceptable methodology but would not tell INSLAW. (Gizzarelli, T. 536) It was well known that Videnieks had a very abrasive personality and had previous difficulty in dealing with INSLAW. (PX 336 [Snider] at pp. 46-50)

262. In an effort once again to satisfy Videnieks, Sherzer wrote to him on July 7, 1983 and stated that INSLAW would be pulling together additional supportive materials to submit to DOJ by early September 1983. (PX 97) Videnieks responded on July 21, 1983, again rejecting INSLAW's methodology and once again gave INSLAW no guidance as to how it was to satisfy Videnieks demand. (PX 99)

263. On July 18, 1983, Videnieks wrote to INSLAW informing it that he had suspended payment to INSLAW of almost a quarter of a million dollars in INSLAW's computer time sharing costs. (PX 98; Videnieks, T. 1869-1870) Videnieks

(b)
copied Associate Attorney General Designate D. Lowell Jensen with his July 18 letter ^{b-1} and stated that he has never even met Jensen and does not know why he copied him. (PX 98; Videnieks, T. 1870)

264. INSLAW's effort to provide further substantiation of its proprietary enhancements for DOJ was abandoned when INSLAW was informed by DOJ, in a telephone conversation between Videnieks and Gizzarelli, that they would refuse to recommend acceptable computer center cost methodologies. (Gizzarelli, T. 536) INSLAW came to understand that Brewer and Videnieks would simply reject any methodology which INSLAW proposed. (Brewer, T. 1716-1717; Videnieks, T. 1844-1847; Hamilton, T. 179-183, 185; Sherzer, T. 984-985, 989)

265. Within a month after INSLAW delivered to DOJ pursuant to Modification 12 its VAX PROMIS software as modified to operate on the PRIME computer in the Los Angeles U.S. Attorney's Office, INSLAW received a letter from Videnieks notifying INSLAW that he had decided to suspend the payment of INSLAW's fees (profit) under the contract and, in fact, without previously acknowledging such, that he had deliberately withheld payment of INSLAW's monthly fee vouchers beginning in July of 1983. (Hamilton, T. 174-175)

266. Under Modification 12, it is undisputed that INSLAW delivered Enhanced PROMIS to DOJ on the basis of an explicit commitment by DOJ which had three components: first, to bargain in good faith to identify the proprietary enhancements; second, to decide within a reasonable time which

enhancements it wanted to use; and third, to bargain in good faith with INSLAW as to the price to be paid for such enhancements. On the basis of the foregoing and all of the evidence taken as a whole, this Court finds and concludes that DOJ never intended to meet its commitment and that once DOJ had received enhanced PROMIS pursuant to Modification 12, DOJ thereafter refused to bargain in good faith with INSLAW and instead engaged in an outrageous, deceitful, fraudulent game of "cat and mouse", demonstrating contempt for both the law and any principle of fair dealing.

VIII. DOJ'S COMMITMENT TO CONSIDER REPLACING WORD PROCESSING MACHINES WITH MICROCOMPUTERS: DOJ'S DECISION INSTEAD TO ATTEMPT TO TERMINATE THE WORD PROCESSING PORTION FOR DEFAULT AND ITS ULTIMATE DECISION TO TERMINATE "FOR CONVENIENCE."

267. By the end of 1983, word processing implementation and the suspension of time sharing costs had become critical issues for INSLAW. (Richardson, T. 641-643) In an effort to resolve these problems, one of INSLAW's attorneys, Elliot Richardson, contacted Edward Schmults, Deputy Attorney General, to schedule a meeting between senior DOJ officials and INSLAW. (Richardson, T. 641) Richardson believed that it was important to get a level of interest and attention at DOJ sufficient to overcome what he considered to be the consequences of bias. (Richardson, T. 641)

268. At this meeting, on December 22, 1983, Richardson stressed to Kevin Rooney, Assistant Attorney General for Administration, the need for a process that could fairly

appraise the merits of questions raised by INSLAW. (Richardson, T. 642) In addition, Richardson proposed that the word processing problem could be resolved if DOJ would substitute full-function microcomputers for the word processing equipment. (Richardson, T. 642-643) As to the time sharing question, Richardson recommended that payment be made to INSLAW pursuant to the terms of the contract. (Richardson, T. 642)

269. The general tenor of the meeting was that Rooney indicated an appreciation of INSLAW's value to DOJ, that he would take an active and sympathetic interest in addressing the issue of withheld funds, and that he would actively explore INSLAW's proposal for the adaptation of the micro-computer system for smaller offices. (Richardson, T. 644) More particularly, Rooney assumed the responsibility of assuring that INSLAW would get a "fair shake." (Richardson, T. 696)

270. One week later, on December 29, 1983, a PROMIS Oversight Committee meeting was held to discuss the PROMIS Contract. (PX 328 [Jensen] at pp. 16-18; PX 339 [Stephens] at p. 19) At that meeting which was chaired by Lowell Jensen, and attended by Tyson, Rooney, Brewer, Harry Flickinger (the Deputy Assistant Attorney General for Procurement) and two other persons. (PX 328 [Jensen] at pp. 16-18; PX 339 [Stephens] at pp. 20-21) Rooney summarized his meeting with Richardson and the matters discussed thereat. (Richardson, T. 698; PX 341 [Tyson] at pp. 175-176)

271. After Rooney left the PROMIS Oversight Committee meeting, and based upon the urging of Brewer and his staff and

notwithstanding Rooney's favorable conclusions about a constructive resolution to the word processing problem, and the fact that that was an initiative arranged by Deputy Attorney General Schultz, Jensen approved a decision to begin termination of the contract for default. (Richardson, T. 644, 698; PX 339 [Stephens] at pp. 25-26; PX 341 [Tyson] at pp. 175-178)

272. Videnieks issued a Show Cause notice to INSLAW in January 1984. (Richardson, T. 644; PX 324 [Brewer] at p. 385) The notice invited INSLAW to show cause why DOJ should not terminate the PROMIS contract for default. (PX 324 [Brewer] at p. 385) Brewer and his staff concurred with Videnieks' decision. (PX 324 [Brewer] at pp. 384-385)

273. After INSLAW received the "Show Cause Notice," Elliot Richardson contacted Rooney to complain that the "Show Cause" notice was inconsistent with the spirit of the December 22, 1983 meeting between Rooney and Richardson. (Richardson, T. 644)

274. Rooney was embarrassed by this inconsistency, but had no real explanation for why the order had been issued. (Richardson, T. 697, 698) Rooney did say however, that the Show Cause Order should not deter INSLAW from negotiating with DOJ along the lines discussed at the December 22nd meeting. (Richardson, T. 644)

275. Rooney advised Richardson to call Lowell Jensen who was then the Acting Deputy Attorney General. (Richardson, T. 645, 698) Rooney, however, did caution Richardson that, in

effect, Jensen would not be a sympathetic listener. (Richardson, T. 645) Richardson understood at the time that Jensen had an unfriendly attitude towards INSLAW. (Richardson, T. 645)

276. Jensen believed that it was a mistake for DOJ's Law Enforcement Assistance Administration (LEAA) to have selected INSLAW's PROMIS case tracking software for nationwide diffusion when the DALITE case tracking software developed under Jensen's auspices in Alameda County, California, was also available and may, according to Jensen, have been superior to PROMIS. (PX 328 [Jensen] at pp. 48-51, 59-60) Further, in April, 1981, immediately after being appointed to the U.S. Department of Justice as Assistant Attorney General for the Criminal Division, Jensen believed that the initial two generations of INSLAW's PROMIS software were inferior to the corresponding generations of the DALITE software. (PX 328 [Jensen], at pp. 51-52) In 1981, Jensen also had expressed to Associate Deputy Attorney General Stan Morris his lack of enthusiasm about the 1981 DOJ decision to install the PROMIS software in the 20 largest U.S. Attorneys' Offices. (PX 328 [Jensen] at pp. 49-51; PX 331 [Morris] at p. 62)

277. In February 1984, DOJ Procurement Counsel William Snider issued a written legal opinion stating that DOJ lacked sufficient legal justification for a default termination of the INSLAW contract. (PX 336 [Snider] 127-131)

278. In February 1984, Brewer telephoned Hamilton to tell him that Jensen had just decided to terminate the word

processing part of the INSLAW contract for convenience.

(Hamilton, T. 207)

279. On February 13, 1984, INSLAW received formal written notice from Videnieks of DOJ's termination for convenience of the entire word processing portion of the 1982 Executive Office contract. (PX 131) No provision was included in that notice suggesting, permitting or requiring any increased dissemination of the mini-computer PROMIS software to any site previously scheduled to implement the word processing software. (PX 131)

280. In February 1984, Donald Santarelli, an attorney for INSLAW met with Jensen to discuss the evidence of mounting difficulties in the DOJ-INSLAW relationship; Jensen assured Santarelli that he did not blame INSLAW for the word processing problems and that he would look with favor on finding the money to fund a proposal by INSLAW to expand significantly the number of full-function computer sites under the contract. (PX 328 [Jensen] at pp. 9-12)

281. Despite having assured INSLAW, through its special counsel, Santarelli, that he would look with favor on such a proposal and find the funds to implement the proposal, Jensen never told this to any of his subordinates. (PX 328 [Jensen] at pp. 9-12; Tyson, T. 1567-1568; PX 343 [Wallace] at pp. 58-59) Had Tyson known this, he certainly would have looked more favorably at the INSLAW proposal. (PX 341 [Tyson] at p. 181)

282. INSLAW acted upon Rooney's and Jensen's encouragement by meeting with Brewer on February 14, 1984, and by submitting a proposal to DOJ for finishing the implementation of PROMIS in U.S. Attorneys Offices. (Hamilton, T. 228; PX 134)

(b) The proposal recommended putting a micro-computer version of PROMIS software into the 74 offices originally intended for word processing software. (Hamilton, T. 228-229; PX 134)

283. In conjunction with INSLAW's proposal, Brewer met with INSLAW's John Gizzarelli. (Gizzarelli, T. 542) During this meeting, Brewer indicated that he saw no need for further PROMIS implementation because "... INSLAW gets nothing right." (Gizzarelli, T. 542) When Gizzarelli informed Brewer that INSLAW would have to let some of its staff go because of its contract disputes with DOJ, Brewer stated that this is exactly what he wanted; this had been Brewer's "objective." (Gizzarelli, T. 543) Brewer also implied to Gizzarelli that Gizzarelli had better also be thinking of new employment. (Gizzarelli, T. 544; Brewer, T. 1598)

284. In April 1984, DOJ rejected INSLAW's proposal which had been submitted as a result of the Richardson and Santarelli efforts, and at the suggestion of Jensen. (Hamilton, T. 229)

IX. THE EFFORTS OF ELLIOT RICHARDSON AND OTHERS TO OBTAIN AN
INDEPENDENT AND IMPARTIAL PROCESS FOR CONSIDERATION OF
INSLAW'S COMPLAINT

A. RICHARDSON MEETS WITH ASSISTANT ATTORNEYS GENERAL FOR
ADMINISTRATION LIOTTA AND WALLACE IN AN ATTEMPT TO
RECEIVE UNBIASED CONSIDERATION OF INSLAW'S COMPLAINTS

285. At the suggestion of Carol Dinkins, the third Deputy Attorney General whom Richardson contacted in his effort to gain a fair and impartial process for INSLAW, Richardson spoke to the new Assistant Attorney General for Administration Anthony Liotta in November, 1984, seeking his help in resolving INSLAW's disputes with DOJ. (Richardson, T. 646-647) Richardson's purpose in contacting Liotta was to establish a level of responsibility at DOJ that could view the issues raised by INSLAW in a "manner that would not be infected by the bias emanating from the Executive Office of the U.S. Attorneys, and the Project Manager in that office." (Richardson, T. 648) Liotta said that once the decision from the Contracting Officer was available, that Liotta would have and would exercise the "responsibility to look at it from the perspective of what's right or wrong." (Richardson, T. 649; PX 165)

286. On December 21, 1984, Richardson met with Liotta, who promised to take a fresh look at the INSLAW situation, and assured Richardson that he had the authority to seek to find a fair resolution on the merits. (Richardson, T. 649)

287. Liotta requested a significant amount of information from INSLAW to be provided for his review, which information was in fact provided to Liotta as quickly as INSLAW's capacities permitted. (Richardson, T. 649)

288. INSLAW's situation did not improve as a result of Richardson's working with Liotta because Liotta left his position in early 1985 without responding to INSLAW regarding the information he had requested and received. (Richardson, T. 649) Thereafter, Lawrence Wallace took over in Liotta's position. (Richardson, T. 649)

289. Between February and April 1985, Richardson had a number of conversations with Wallace. (Richardson, T. 650) Richardson pressed Wallace for a process that would address INSLAW's concerns on the merits and for a response to his suggestions to keep INSLAW afloat. (Richardson, T. 650; PX 185; PX 317) In one such conversation on March 12, 1985, Wallace told Richardson that he rejected a proposal from his staff for a "time-consuming attenuated process" for resolving the merits of the INSLAW issues, because Wallace wished to move forward as rapidly as possible. (Richardson, T. 653; DX 151) During a telephone conversation on March 13, Richardson stated to Wallace that the INSLAW situation did not reflect "great credit on the process" being pursued at DOJ. (Richardson, T. 654; DX 153)

290. Elliot Richardson and Donald Santarelli visited Acting Deputy Attorney General Jensen on March 13, 1985, to ask for an immediate investigation into INSLAW's complaints about Brewer; to request again a process for fair and expeditious resolution of the contract disputes that had propelled INSLAW into bankruptcy; and DOJ consideration of the larger public interest involved in preserving INSLAW as a unique asset for

both U.S. Attorneys and the state and local prosecutors and courts. (Richardson, T. 658-660; PX 328 [Jensen] at pp. 22-24) Santarelli was emphatic about the need for an investigation into INSLAW's allegations of bias. (Richardson, T. 659-660; PX 261) The situation respecting INSLAW did not improve as a result of this meeting. (Richardson, T. 660-661)

B. AT JENSEN'S SUGGESTION, RICHARDSON AND OTHERS ATTEMPT TO RESOLVE THE DOJ BIAS WITH ASSOCIATE DEPUTY ATTORNEY GENERAL JAY STEPHENS

291. At this point, Richardson had become increasingly impatient about DOJ's failure fairly and expeditiously to address INSLAW's concerns. (Richardson, T. 654) Based on his experience with Rooney, Liotta and Wallace, Richardson concluded that they were afraid to take on the project manager "who was essentially in a position of controlling all the information, the technical knowledge." (Richardson, T. 655) As the basis for this conclusion, Richardson observed that he received basically the same response from each of these people, i.e., willingness to go forward but no actual movement, combined with the withholding by DOJ of ever-increasing monies due for contract costs and fees. (Richardson, T. 658) As of this time, also, Wallace advised Richardson that DOJ would be asserting counterclaims against INSLAW, an act that Richardson found extremely damaging given the fact that INSLAW had filed for bankruptcy only the month before. (Richardson, T. 658)

292. In March 1985, Richardson began a series of telephone conversations with Jensen's aide, Associate Deputy

Attorney General Jay Stephens, concerning INSLAW. (DX 157; Richardson, T. 661) Richardson had been informed that Jensen had designated Stephens as the DOJ official to pursue on Jensen's behalf the matters raised by Richardson and Santarelli. (PX 328 [Jensen] at pp. 24-25, 37-38; PX 339 [Stephens] at p. 40; Richardson, T. 661; PX 269) According to Stephens, Jensen's subordinates learned to "read between the lines" to determine what Jensen expected them to do because Jensen would frequently not state his expectations explicitly. (PX 339 [Stephens] at pp. 49-50)

293. These contacts started out dealing with initiation of a negotiating process for INSLAW during the Summer of 1985. (Richardson, T. 661-662; PX 148) They also included efforts to get answers from DOJ on INSLAW's 1985 proposal for adaptation of PROMIS on microcomputers for the 74 smaller U.S. Attorney's offices. (Richardson, T. 661-662)

294. One particular conversation in mid-summer 1985 between Richardson and Stephens concerned Richardson's request to Stephens for assurance that Janis Sposato, JMD's General Counsel and the lead negotiator for DOJ during the 1985 negotiations, understood that she was representing DOJ, as a whole, and not merely Brewer and the EOUSA. (Richardson, T. 662) Richardson had a concern in this regard because she seemed obliged to take, and adhere to positions that "... did not reflect the kind of reasonableness and understanding of the merits that one would expect of her." (Richardson, T. 662) Richardson also felt that Sposato felt constrained to conform

to the demands of EOUSA "... rather than acting as an independent attorney on the responsibilities of the Department of Justice toward the public of the United States."

(Richardson, T. 662)

295. On August 2, 1985, Donald Santarelli wrote Attorney General Edwin Meese III to apprise him generally of the dispute between INSLAW and DOJ, and to request any assistance he might be able to offer INSLAW in resolving promptly the contractual disputes with DOJ and the bias of DOJ officials against INSLAW. (PX 270)

296. On August 16, 1985, following another of these telephone conversations, Richardson wrote to Stephens again seeking a fair consideration of INSLAW's positions (PX 189; PX 190) This letter had been written out of Richardson's concern that DOJ was not engaging in serious negotiations. (Richardson, T. 666; PX 266) Stephens responded on September 27, 1985 with essentially a non-answer to Richardson's inquiry. (Richardson, T. 666) Stephens' gratuitous observation that he would not "intervene in these negotiations" was totally unrelated to Richardson's inquiries. (Richardson, T. 667; PX 266) Richardson had never suggested that Jensen, Stephens or anyone else at DOJ intervene; only that such higher officials meet their responsibility to assure a process that was expeditious and fair. (Richardson, T. 667)

297. On November 15, 1985, Sposato sent a "counter-offer" to INSLAW's earlier global settlement proposal. (Sposato, T. 2293-2294; PX 199) Sposato's letter essentially

denied all of INSLAW's claims, required INSLAW to recognize the government's rights in INSLAW's proprietary PROMIS enhancements, and moreover demanded payment by INSLAW to DOJ of nearly \$700,000. (PX 199) Richardson's reaction to this letter was "... that Brewer had another victim." (Richardson, T. 668)

C. INSLAW'S "LAST DITCH EFFORT" TO OBTAIN FROM JENSEN AN INDEPENDENT CONSIDERATION AND INVESTIGATION OF DOJ'S BIAS AGAINST INSLAW

298. In response to the November 15 Sposato letter, Richardson wrote to Jensen on November 25, 1985 with his analysis of various disputes between DOJ and INSLAW. He addressed the issue of DOJ's unauthorized use of Enhanced PROMIS, specifically questioning Sposato's denial of any obligation to pay INSLAW for DOJ's use of Enhanced PROMIS, in disregard of the Morris August 11, 1982 letter and Modification 12. He renewed INSLAW's proposal to implement PROMIS on microcomputers for the smaller U.S. Attorney's Offices and requested a meeting to discuss these issues. (PX 200; Richardson, T. 670)

299. In December 1985, Richardson and Hamilton met with Jensen and others from DOJ to discuss the points raised in Richardson's November 25 letter. (Richardson, T. 672-673; Hamilton, T. 214-215; Jensen, T. 39-47) Richardson opened with a reference to the inscription in the rotunda outside the Attorney General's Office which states that the U.S. wins its point whenever justice is done to one of its citizens. Richardson said that the performance of the department in this dispute had been scandalous, and "it was hard to avoid the

conclusion that an effort was being made to retaliate against Bill Hamilton personally." (Richardson, T. 674) Richardson said that in this dispute the DOJ was behaving as though it were a private litigant rather than fulfilling its obligation to "turn square corners in dealing with others." He also raised the issue of the investigation of bias. Richardson then addressed the limited success of the negotiating process in 1985 and sought to find out whether the position conveyed to INSLAW by Sposato's letter was the official position of the Department of Justice. (Richardson, T. 676, 733; Hamilton, T. 78) Lastly, Richardson asked for a response to INSLAW's proposals for new business which had been conveyed to Mr. Jensen in March 1985. (Hamilton, T. 78; Richardson, T. 674)

300. At that meeting, Jensen referred derogatorily towards PROMIS and alluded that he did not have a "very high view" of PROMIS when he had been District Attorney of Alameda County. (Richardson, T. 675)

301. Jensen told Richardson that there was little room to negotiate on Sposato's November 15 proposal. (Hamilton, T. 402)

302. As far as Richardson was concerned, this meeting was a "last ditch effort" to follow up on his November letter. (Richardson, T. 674) In effect, Richardson was asking Jensen whether Sposato's letter of November 15 represented a final answer from DOJ. (Richardson, T. 676)

303. Richardson perceived that Jensen was tentative and noncommittal and he received no indication of what was going to happen. (Richardson, T. 674)

304. Richardson received a response to his inquiry by letter dated January 15, 1986 from Jensen in which Jensen said in effect that Sposato's November 15, 1985 letter was a serious offer and that consideration of INSLAW's proposal for expanded or revised use of PROMIS would be further delayed due to DOJ's review of its overall case management needs. (Richardson, T. 679; PX 202) Richardson considered this letter to be a "take it or leave it" letter and to be "... more of the same, i.e., more stalling on negotiations and indefinite deferment of any serious consideration of our proposals." (Richardson, T. 679) This letter was really an "offer that condemns INSLAW to death." (Richardson, T. 711)

305. Subsequent to receipt of this letter, in 1986 Richardson concluded that INSLAW had no other alternative but to file suit. (Richardson, T. 680; PX 204) Despite his natural proclivity to work patiently through governmental processes, Richardson decided that he had failed at every step of the way in his efforts to obtain a fair and impartial process on behalf of INSLAW. (Richardson, T. 680) This inaction on the part of DOJ was particularly distressing to Richardson in light of INSLAW's substantial contributions to the administration of justice, and because of the addition of \$250 million in one year to Federal revenues due to PROMIS-generated computerized debt collections activity.

(Richardson, T. 712; PX 167) In fact, Richardson believed that he may have poorly advised INSLAW in continuing on with its efforts to obtain consideration on the merits of its concerns from DOJ. (Richardson, T. 680)

306. Based on all of his observations, Richardson concluded that the strongest hypothesis was that there was some degree of bias at the higher levels of DOJ which insulated the strongly evidenced bias at lower levels of DOJ from any substantive inquiry. (Richardson, T. 737)

X. JENSEN'S BIASED ATTITUDE AGAINST INSLAW AND HIS
INDIFFERENCE TO INSLAW'S REPEATED COMPLAINTS OF MISCONDUCT
BY OTHER DOJ OFFICIALS

A. DEPUTY ATTORNEY GENERAL D. LOWELL JENSEN HAD A
PREVIOUSLY DEVELOPED NEGATIVE ATTITUDE ABOUT PROMIS
AND INSLAW

307. Jensen adopted as his own view the notion, published in 1980 in the book, Improving Prosecution?, that it was a mistake for DOJ's Law Enforcement Assistance Administration (LEAA) to have selected INSLAW's PROMIS case tracking software for nationwide diffusion when the DALITE case tracking software developed under Jensen's auspices in Alameda County, California, was also available and may, according to Jensen, have been superior to PROMIS. (PX 328 [Jensen] at pp. 48-51, 59-60)

308. In April, 1981, immediately after being appointed to the U.S. Department of Justice as Assistant Attorney General for the Criminal Division, Jensen volunteered to INSLAW employees the belief that the initial two generations of

INSLAW's PROMIS software were inferior to the corresponding generations of the DALITE software. (PX 328 [Jensen] at pp. 51-52)

309. In 1981, Jensen expressed to Associate Deputy Attorney General Stan Morris his lack of enthusiasm about the 1981 DOJ decision to install the PROMIS software in the 20 largest U.S. Attorneys' Offices. (PX 328 [Jensen] at pp. 49-51; PX 331 [Morris] at pp. 62)

B. JENSEN'S CLOSE INVOLVEMENT IN THE PROMIS CONTRACT AS RANKING DOJ OFFICIAL ON THE PROMIS OVERSIGHT COMMITTEE AND IMMEDIATE ORGANIZATIONAL SUPERIOR OF THE EXECUTIVE OFFICE DURING THE PERIOD OF BREWER'S MISCONDUCT AGAINST INSLAW

310. While Assistant Attorney General for the Criminal Division, Jensen attended PROMIS Oversight Committee meetings. (PX 328 [Jensen] at pp. 83-84)

311. Brewer testified that one of his duties as PROMIS Manager for the Executive Office was briefing Jensen's staff while Jensen was head of the Criminal Division. (Brewer, T. 1604, 1661-1662)

312. The Executive Office reported directly to Jensen when he was Associate Attorney General and then began reporting directly to the Deputy Attorney General when Jensen was promoted to that position. (Brewer, T. 1661-1662; Tyson, T. 1534-1535)

313. About the time that Jensen was promoted to Associate Attorney General, ranking DOJ official on the PROMIS Oversight Committee and immediate organizational superior of

indicated INSLAW's position that it could, in fact, copyright software "... developed at Government expense." (PX 81) 27/

252. In a telephone conversation on May 9, 1983 with Videnieks and Mike Snyder, Videnieks' COTR, Rugh reviewed the INSLAW May 4th letter. (PX 84) While concluding that INSLAW had not yet supported its claim of privately financed enhancements, Rugh believed that an acceptable methodology could be devised to do so. (PX 84) He proposed that Videnieks adopt one of these alternative responses:

- a) flat out denial of INSLAW's proposed methodology and a government decision that INSLAW had failed to substantiate its claims;
- b) a response that INSLAW's method is not acceptable and suggest an acceptable method; or
- c) a response that INSLAW has not substantiated its claim and ask INSLAW to resubstantiate without agreeing to a methodology. (PX 84)

253. Rugh also performed an analysis of INSLAW's submission which noted the purported deficiencies in the

27/ Brewer professed to think that INSLAW's position was spurious and never informed INSLAW that DOJ's counsel had agreed specifically with INSLAW's position. (Brewer, T. 1716) By Sherzer's May 4 letter, INSLAW requested DOJ's opinion in support of its position on the question of whether Enhanced PROMIS could be copyrighted and supplied in a memorandum dated April 26, 1983 to DOJ. (PX 81) On June 1, 1983, the Director of the Commercial Litigation Branch of DOJ's Civil Division issued a legal memorandum to Snider, JMD's Administrative Counsel, which agreed with INSLAW that copyright law does not prohibit a contractor from obtaining a copyright in software produced under a government contract. (PX 91) Despite this seeming unequivocal opinion, DOJ repeatedly deferred INSLAW's inquiries on the issue. (PX 93; PX 95)

submission and concluded that the proposed methodology was unacceptable. (PX 87; PX 88) DOJ never provided INSLAW with Rugh's analysis. (Rugh, T. 1498) Similarly, no one from DOJ ever approached INSLAW to discuss Rugh's analysis or to attempt to resolve the purported deficiencies described by Rugh. (Rugh, T. 1498-1502; Brewer, T. 1717; Videnieks, T. 1848) Rugh knew of no reason for withholding his analysis from INSLAW and Brewer admitted it was reasonable for INSLAW to ask the government either to accept the methodology or to propose alternatives. (PX 324 [Brewer] at p. 323; Rugh, T. 1513)

254. At no time during Rugh's analysis of INSLAW's proprietary enhancements did he inform Brewer that the endeavor was meaningless because such enhancements were called for and deliverable under the contract. (Brewer, T. 1711-1712) Similarly, at no time did Brewer ever inform INSLAW that its effort to substantiate the enhancements was unnecessary because such enhancements were called for under the contract. (Brewer, T. 1714-1715)

255. Rugh, Videnieks and Snyder all agreed that DOJ should not get involved with giving INSLAW advice as to how it could satisfy DOJ's request for substantiation of its enhancement "... since they made the claim proof (should be) readily available." (PX 84)

256. Brewer understood that there were several industry standard ways of documenting software development. (Brewer, T. 1713-1714) Although Brewer could not describe such industry standards, Brewer believed that Rugh was familiar with

them. (Brewer, T. 1730) Notwithstanding such purported knowledge, Rugh drafted a letter for Videnieks' signature which adopted his third alternative response rejecting INSLAW's methodology and refusing to provide INSLAW any guidance as to an acceptable methodology. (PX 82; PX 95; Brewer, T. 1713-1714)

257. Videnieks gave INSLAW an ultimatum of providing additional acceptable information by July 11, 1983 or DOJ would be forced to conclude that all of INSLAW's claimed enhancements were developed within the scope of government contracts. (PX 95) Videnieks signed the letter and sent it to INSLAW on June 10, 1983. (PX 95)

258. Sherzer believed that since INSLAW had provided DOJ with a methodology, and DOJ had complete access to INSLAW's total operations to verify INSLAW's assertion, DOJ had an affirmative obligation to propose an alternative methodology. (Sherzer, T. 1033-1034)

259. Sherzer and Gizzarelli called Videnieks in June 1983 to determine what form of proof would satisfy DOJ. (DX 79; Gizzarelli, T. 536; Sherzer, T. 984) Videnieks declined to comment on this issue and stated that it was up to INSLAW to determine the method and provide the proof. (DX 79; Sherzer, T. 985-986; Gizzarelli, T. 536; Hamilton, T. 181-183) In reality, DOJ knew that INSLAW could not choose whatever method of proof INSLAW wished; indeed, DOJ had already rejected two levels of detailed proofs and refused to consider acceptable the proposed third method. (Hamilton, T. 183; Merrill, T. 794-798; PX 76, 80, 95)

260. Sherzer concluded from this conversation, and it is obvious from the record as a whole, that DOJ would never be satisfied with any proof submitted by INSLAW to support its proprietary enhancement claims. (DX 79; Hamilton, T. 185; Sherzer, T. 989; Merrill, T. 797-798) Sherzer also concluded that DOJ intended to assert and maintain the position that the software belongs to the government in its entirety. (DX 79) Sherzer's final conclusion was that INSLAW had no choice but to contest the proprietary enhancements issue as far as was necessary. (DX 79)

261. Gizzarelli correctly believed Videnieks to be engaged in a game of "cat and mouse," that Videnieks knew of an acceptable methodology but would not tell INSLAW. (Gizzarelli, T. 536) It was well known that Videnieks had a very abrasive personality and had previous difficulty in dealing with INSLAW. (PX 336 [Snider] at pp. 46-50)

262. In an effort once again to satisfy Videnieks, Sherzer wrote to him on July 7, 1983 and stated that INSLAW would be pulling together additional supportive materials to submit to DOJ by early September 1983. (PX 97) Videnieks responded on July 21, 1983, again rejecting INSLAW's methodology and once again gave INSLAW no guidance as to how it was to satisfy Videnieks demand. (PX 99)

263. On July 18, 1983, Videnieks wrote to INSLAW informing it that he had suspended payment to INSLAW of almost a quarter of a million dollars in INSLAW's computer time sharing costs. (PX 98; Videnieks, T. 1869-1870) Videnieks

copied Associate Attorney General Designate D. Lowell Jensen with his July 18 letter ^{b-1} and stated that he has never even met Jensen and does not know why he copied him. (PX 98; Videnieks, T. 1870)

264. INSLAW's effort to provide further substantiation of its proprietary enhancements for DOJ was abandoned when INSLAW was informed by DOJ, in a telephone conversation between Videnieks and Gizzarelli, that they would refuse to recommend acceptable computer center cost methodologies. (Gizzarelli, T. 536) INSLAW came to understand that Brewer and Videnieks would simply reject any methodology which INSLAW proposed. (Brewer, T. 1716-1717; Videnieks, T. 1844-1847; Hamilton, T. 179-183, 185; Sherzer, T. 984-985, 989)

265. Within a month after INSLAW delivered to DOJ pursuant to Modification 12 its VAX PROMIS software as modified to operate on the PRIME computer in the Los Angeles U.S. Attorney's Office, INSLAW received a letter from Videnieks notifying INSLAW that he had decided to suspend the payment of INSLAW's fees (profit) under the contract and, in fact, without previously acknowledging such, that he had deliberately withheld payment of INSLAW's monthly fee vouchers beginning in July of 1983. (Hamilton, T. 174-175)

266. Under Modification 12, it is undisputed that INSLAW delivered Enhanced PROMIS to DOJ on the basis of an explicit commitment by DOJ which had three components: first, to bargain in good faith to identify the proprietary enhancements; second, to decide within a reasonable time which

enhancements it wanted to use; and third, to bargain in good faith with INSLAW as to the price to be paid for such enhancements. On the basis of the foregoing and all of the evidence taken as a whole, this Court finds and concludes that DOJ never intended to meet its commitment and that once DOJ had received Enhanced PROMIS pursuant to Modification 12, DOJ thereafter refused to bargain in good faith with INSLAW and instead engaged in an outrageous, deceitful, fraudulent game of "cat and mouse", demonstrating contempt for both the law and any principle of fair dealing.

VIII. DOJ'S COMMITMENT TO CONSIDER REPLACING WORD PROCESSING MACHINES WITH MICROCOMPUTERS; DOJ'S DECISION INSTEAD TO ATTEMPT TO TERMINATE THE WORD PROCESSING PORTION FOR DEFAULT AND ITS ULTIMATE DECISION TO TERMINATE "FOR CONVENIENCE."

267. By the end of 1983, word processing implementation and the suspension of time sharing costs had become critical issues for INSLAW. (Richardson, T. 641-643) In an effort to resolve these problems, one of INSLAW's attorneys, Elliot Richardson, contacted Edward Schmults, Deputy Attorney General, to schedule a meeting between senior DOJ officials and INSLAW. (Richardson, T. 641) Richardson believed that it was important to get a level of interest and attention at DOJ sufficient to overcome what he considered to be the consequences of bias. (Richardson, T. 641)

268. At this meeting, on December 22, 1983, Richardson stressed to Kevin Rooney, Assistant Attorney General for Administration, the need for a process that could fairly

appraise the merits of questions raised by INSLAW. (Richardson, T. 642) In addition, Richardson proposed that the word processing problem could be resolved if DOJ would substitute full-function microcomputers for the word processing equipment. (Richardson, T. 642-643) As to the time sharing question, Richardson recommended that payment be made to INSLAW pursuant to the terms of the contract. (Richardson, T. 642)

269. The general tenor of the meeting was that Rooney indicated an appreciation of INSLAW's value to DOJ, that he would take an active and sympathetic interest in addressing the issue of withheld funds, and that he would actively explore INSLAW's proposal for the adaptation of the micro-computer system for smaller offices. (Richardson, T. 644) More particularly, Rooney assumed the responsibility of assuring that INSLAW would get a "fair shake." (Richardson, T. 696)

270. One week later, on December 29, 1983, a PROMIS Oversight Committee meeting was held to discuss the PROMIS Contract. (PX 328 [Jensen] at pp. 16-18; PX 339 [Stephens] at p. 19) At that meeting which was chaired by Lowell Jensen, and attended by Tyson, Rooney, Brewer, Harry Flickinger (the Deputy Assistant Attorney General for Procurement) and two other persons. (PX 328 [Jensen] at pp. 16-18; PX 339 [Stephens] at pp. 20-21) Rooney summarized his meeting with Richardson and the matters discussed thereat. (Richardson, T. 698; PX 341 [Tyson] at pp. 175-176)

271. After Rooney left the PROMIS Oversight Committee meeting, and based upon the urging of Brewer and his staff and

notwithstanding Rooney's favorable conclusions about a constructive resolution to the word processing problem, and the fact that that was an initiative arranged by Deputy Attorney General Schultz, Jensen approved a decision to begin termination of the contract for default. (Richardson, T. 644, 698; PX 339 [Stephens] at pp. 25-26; PX 341 [Tyson] at pp. 175-178)

272. Videnieks issued a Show Cause notice to INSLAW in January 1984. (Richardson, T. 644; PX 324 [Brewer] at p. 385) The notice invited INSLAW to show cause why DOJ should not terminate the PROMIS contract for default. (PX 324 [Brewer] at p. 385) Brewer and his staff concurred with Videnieks' decision. (PX 324 [Brewer] at pp. 384-385)

273. After INSLAW received the "Show Cause Notice," Elliot Richardson contacted Rooney to complain that the "Show Cause" notice was inconsistent with the spirit of the December 22, 1983 meeting between Rooney and Richardson. (Richardson, T. 644)

274. Rooney was embarrassed by this inconsistency, but had no real explanation for why the order had been issued. (Richardson, T. 697, 698) Rooney did say however, that the Show Cause Order should not deter INSLAW from negotiating with DOJ along the lines discussed at the December 22nd meeting. (Richardson, T. 644)

275. Rooney advised Richardson to call Lowell Jensen who was then the Acting Deputy Attorney General. (Richardson, T. 645, 698) Rooney, however, did caution Richardson that, in

effect, Jensen would not be a sympathetic listener. (Richardson, T. 645) Richardson understood at the time that Jensen had an unfriendly attitude towards INSLAW. (Richardson, T. 645)

276. Jensen believed that it was a mistake for DOJ's Law Enforcement Assistance Administration (LEAA) to have selected INSLAW's PROMIS case tracking software for nationwide diffusion when the DALITE case tracking software developed under Jensen's auspices in Alameda County, California, was also available and may, according to Jensen, have been superior to PROMIS. (PX 328 [Jensen] at pp. 48-51, 59-60) Further, in April, 1981, immediately after being appointed to the U.S. Department of Justice as Assistant Attorney General for the Criminal Division, Jensen believed that the initial two generations of INSLAW's PROMIS software were inferior to the corresponding generations of the DALITE software. (PX 328 [Jensen], at pp. 51-52) In 1981, Jensen also had expressed to Associate Deputy Attorney General Stan Morris his lack of enthusiasm about the 1981 DOJ decision to install the PROMIS software in the 20 largest U.S. Attorneys' Offices. (PX 328 [Jensen] at pp. 49-51; PX 331 [Morris] at p. 62)

277. In February 1984, DOJ Procurement Counsel William Snider issued a written legal opinion stating that DOJ lacked sufficient legal justification for a default termination of the INSLAW contract. (PX 336 [Snider] 127-131)

278. In February 1984, Brewer telephoned Hamilton to tell him that Jensen had just decided to terminate the word

processing part of the INSLAW contract for convenience.
(Hamilton, T. 207)

279. On February 13, 1984, INSLAW received formal written notice from Videnieks of DOJ's termination for convenience of the entire word processing portion of the 1982 Executive Office contract. (PX 131) No provision was included in that notice suggesting, permitting or requiring any increased dissemination of the mini-computer PROMIS software to any site previously scheduled to implement the word processing software. (PX 131)

280. In February 1984, Donald Santarelli, an attorney for INSLAW met with Jensen to discuss the evidence of mounting difficulties in the DOJ-INSLAW relationship; Jensen assured Santarelli that he did not blame INSLAW for the word processing problems and that he would look with favor on finding the money to fund a proposal by INSLAW to expand significantly the number of full-function computer sites under the contract. (PX 328 [Jensen] at pp. 9-12)

281. Despite having assured INSLAW, through its special counsel, Santarelli, that he would look with favor on such a proposal and find the funds to implement the proposal, Jensen never told this to any of his subordinates. (PX 328 [Jensen] at pp. 9-12; Tyson, T. 1567-1568; PX 343 [Wallace] at pp. 58-59) Had Tyson known this, he certainly would have looked more favorably at the INSLAW proposal. (PX 341 [Tyson] at p. 181)

282. INSLAW acted upon Rooney's and Jensen's encouragement by meeting with Brewer on February 14, 1984, and by submitting a proposal to DOJ for finishing the implementation of PROMIS in U.S. Attorneys Offices. (Hamilton, T. 228; PX 134)

(B) The proposal recommended putting a micro-computer version of PROMIS software into the 74 offices originally intended for word processing software. (Hamilton, T. 228-229; PX 134)

283. In conjunction with INSLAW's proposal, Brewer met with INSLAW's John Gizzarelli. (Gizzarelli, T. 542) During this meeting, Brewer indicated that he saw no need for further PROMIS implementation because "... INSLAW gets nothing right." (Gizzarelli, T. 542) When Gizzarelli informed Brewer that INSLAW would have to let some of its staff go because of its contract disputes with DOJ, Brewer stated that this is exactly what he wanted; this had been Brewer's "objective." (Gizzarelli, T. 543) Brewer also implied to Gizzarelli that Gizzarelli had better also be thinking of new employment. (Gizzarelli, T. 544; Brewer, T. 1598)

284. In April 1984, DOJ rejected INSLAW's proposal which had been submitted as a result of the Richardson and Santarelli efforts, and at the suggestion of Jensen. (Hamilton, T. 229)

IX. THE EFFORTS OF ELLIOT RICHARDSON AND OTHERS TO OBTAIN AN
INDEPENDENT AND IMPARTIAL PROCESS FOR CONSIDERATION OF
INSLAW'S COMPLAINT

A. RICHARDSON MEETS WITH ASSISTANT ATTORNEYS GENERAL FOR
ADMINISTRATION LIOTTA AND WALLACE IN AN ATTEMPT TO
RECEIVE UNBIASED CONSIDERATION OF INSLAW'S COMPLAINTS

285. At the suggestion of Carol Dinkins, the third Deputy Attorney General whom Richardson contacted in his effort to gain a fair and impartial process for INSLAW, Richardson spoke to the new Assistant Attorney General for Administration Anthony Liotta in November, 1984, seeking his help in resolving INSLAW's disputes with DOJ. (Richardson, T. 646-647) Richardson's purpose in contacting Liotta was to establish a level of responsibility at DOJ that could view the issues raised by INSLAW in a "manner that would not be infected by the bias emanating from the Executive Office of the U.S. Attorneys, and the Project Manager in that office." (Richardson, T. 648) Liotta said that once the decision from the Contracting Officer was available, that Liotta would have and would exercise the "responsibility to look at it from the perspective of what's right or wrong." (Richardson, T. 649; PX 165)

286. On December 21, 1984, Richardson met with Liotta, who promised to take a fresh look at the INSLAW situation, and assured Richardson that he had the authority to seek to find a fair resolution on the merits. (Richardson, T. 649)

287. Liotta requested a significant amount of information from INSLAW to be provided for his review, which information was in fact provided to Liotta as quickly as INSLAW's capacities permitted. (Richardson, T. 649)

288. INSLAW's situation did not improve as a result of Richardson's working with Liotta because Liotta left his position in early 1985 without responding to INSLAW regarding the information he had requested and received. (Richardson, T. 649) Thereafter, Lawrence Wallace took over in Liotta's position. (Richardson, T. 649)

289. Between February and April 1985, Richardson had a number of conversations with Wallace. (Richardson, T. 650) Richardson pressed Wallace for a process that would address INSLAW's concerns on the merits and for a response to his suggestions to keep INSLAW afloat. (Richardson, T. 650; PX 185; PX 317) In one such conversation on March 12, 1985, Wallace told Richardson that he rejected a proposal from his staff for a "time-consuming attenuated process" for resolving the merits of the INSLAW issues, because Wallace wished to move forward as rapidly as possible. (Richardson, T. 653; DX 151) During a telephone conversation on March 13, Richardson stated to Wallace that the INSLAW situation did not reflect "great credit on the process" being pursued at DOJ. (Richardson, T. 654; DX 153)

290. Elliot Richardson and Donald Santarelli visited Acting Deputy Attorney General Jensen on March 13, 1985, to ask for an immediate investigation into INSLAW's complaints about Brewer; to request again a process for fair and expeditious resolution of the contract disputes that had propelled INSLAW into bankruptcy; and DOJ consideration of the larger public interest involved in preserving INSLAW as a unique asset for

both U.S. Attorneys and the state and local prosecutors and courts. (Richardson, T. 658-660; PX 328 [Jensen] at pp. 22-24) Santarelli was emphatic about the need for an investigation into INSLAW's allegations of bias. (Richardson, T. 659-660; PX 261) The situation respecting INSLAW did not improve as a result of this meeting. (Richardson, T. 660-661)

B. AT JENSEN'S SUGGESTION, RICHARDSON AND OTHERS ATTEMPT TO RESOLVE THE DOJ BIAS WITH ASSOCIATE DEPUTY ATTORNEY GENERAL JAY STEPHENS

291. At this point, Richardson had become increasingly impatient about DOJ's failure fairly and expeditiously to address INSLAW's concerns. (Richardson, T. 654) Based on his experience with Rooney, Liotta and Wallace, Richardson concluded that they were afraid to take on the project manager "who was essentially in a position of controlling all the information, the technical knowledge." (Richardson, T. 655) As the basis for this conclusion, Richardson observed that he received basically the same response from each of these people, i.e., willingness to go forward but no actual movement, combined with the withholding by DOJ of ever-increasing monies due for contract costs and fees. (Richardson, T. 658) As of this time, also, Wallace advised Richardson that DOJ would be asserting counterclaims against INSLAW, an act that Richardson found extremely damaging given the fact that INSLAW had filed for bankruptcy only the month before. (Richardson, T. 658)

292. In March 1985, Richardson began a series of telephone conversations with Jensen's aide, Associate Deputy

Attorney General Jay Stephens, concerning INSLAW. (DX 157; Richardson, T. 661) Richardson had been informed that Jensen had designated Stephens as the DOJ official to pursue on Jensen's behalf the matters raised by Richardson and Santarelli. (PX 328 [Jensen] at pp. 24-25, 37-38; PX 339 [Stephens] at p. 40; Richardson, T. 661; PX 269) According to Stephens, Jensen's subordinates learned to "read between the lines" to determine what Jensen expected them to do because Jensen would frequently not state his expectations explicitly. (PX 339 [Stephens] at pp. 49-50)

293. These contacts started out dealing with initiation of a negotiating process for INSLAW during the Summer of 1985. (Richardson, T. 661-662; PX 148) They also included efforts to get answers from DOJ on INSLAW's 1985 proposal for adaptation of PROMIS on microcomputers for the 74 smaller U.S. Attorney's offices. (Richardson, T. 661-662)

294. One particular conversation in mid-summer 1985 between Richardson and Stephens concerned Richardson's request to Stephens for assurance that Janis Sposato, JMD's General Counsel and the lead negotiator for DOJ during the 1985 negotiations, understood that she was representing DOJ, as a whole, and not merely Brewer and the EOUSA. (Richardson, T. 662) Richardson had a concern in this regard because she seemed obliged to take, and adhere to positions that "...did not reflect the kind of reasonableness and understanding of the merits that one would expect of her." (Richardson, T. 662) Richardson also felt that Sposato felt constrained to conform

to the demands of EOUSA "... rather than acting as an independent attorney on the responsibilities of the Department of Justice toward the public of the United States." (Richardson, T. 662)

295. On August 2, 1985, Donald Santarelli wrote Attorney General Edwin Meese III to apprise him generally of the dispute between INSLAW and DOJ, and to request any assistance he might be able to offer INSLAW in resolving promptly the contractual disputes with DOJ and the bias of DOJ officials against INSLAW. (PX 270)

296. On August 16, 1985, following another of these telephone conversations, Richardson wrote to Stephens again seeking a fair consideration of INSLAW's positions (PX 189; PX 190) This letter had been written out of Richardson's concern that DOJ was not engaging in serious negotiations. (Richardson, T. 666; PX 266) Stephens responded on September 27, 1985 with essentially a non-answer to Richardson's inquiry. (Richardson, T. 666) Stephens' gratuitous observation that he would not "intervene in these negotiations" was totally unrelated to Richardson's inquiries. (Richardson, T. 667; PX 266) Richardson had never suggested that Jensen, Stephens or anyone else at DOJ intervene; only that such higher officials meet their responsibility to assure a process that was expeditious and fair. (Richardson, T. 667)

297. On November 15, 1985, Sposato sent a "counter-offer" to INSLAW's earlier global settlement proposal. (Sposato, T. 2293-2294; PX 199) Sposato's letter essentially

denied all of INSLAW's claims, required INSLAW to recognize the Government's rights in INSLAW's proprietary PROMIS enhancements, and moreover demanded payment by INSLAW to DOJ of nearly \$700,000. (PX 199) Richardson's reaction to this letter was "... that Brewer had another victim." (Richardson, T. 668)

C. INSLAW'S "LAST DITCH EFFORT" TO OBTAIN FROM JENSEN AN INDEPENDENT CONSIDERATION AND INVESTIGATION OF DOJ'S BIAS AGAINST INSLAW

298. In response to the November 15 Sposato letter, Richardson wrote to Jensen on November 25, 1985 with his analysis of various disputes between DOJ and INSLAW. He addressed the issue of DOJ's unauthorized use of Enhanced PROMIS, specifically questioning Sposato's denial of any obligation to pay INSLAW for DOJ's use of Enhanced PROMIS, in disregard of the Morris August 11, 1982 letter and Modification 12. He renewed INSLAW's proposal to implement PROMIS on microcomputers for the smaller U.S. Attorney's Offices and requested a meeting to discuss these issues. (PX 200; Richardson, T. 670)

299. In December 1985, Richardson and Hamilton met with Jensen and others from DOJ to discuss the points raised in Richardson's November 25 letter. (Richardson, T. 672-673; Hamilton, T. 214-215; Jensen, T. 39-47) Richardson opened with a reference to the inscription in the rotunda outside the Attorney General's Office which states that the U.S. wins its point whenever justice is done to one of its citizens. Richardson said that the performance of the department in this dispute had been scandalous, and "it was hard to avoid the

Conclusion that an effort was being made to retaliate against Bill Hamilton personally." (Richardson, T. 674) Richardson said that in this dispute the DOJ was behaving as though it were a private litigant rather than fulfilling its obligation to "turn square corners in dealing with others." He also raised the issue of the investigation of bias. Richardson then addressed the limited success of the negotiating process in 1985 and sought to find out whether the position conveyed to INSLAW by Sposato's letter was the official position of the Department of Justice. (Richardson, T. 676, 733; Hamilton, T. 78) Lastly, Richardson asked for a response to INSLAW's proposals for new business which had been conveyed to Mr. Jensen in March 1985. (Hamilton, T. 78; Richardson, T. 674)

300. At that meeting, Jensen referred derogatorily towards PROMIS and alluded that he did not have a "very high view" of PROMIS when he had been District Attorney of Alameda County. (Richardson, T. 675)

301. Jensen told Richardson that there was little room to negotiate on Sposato's November 15 proposal. (Hamilton, T. 402)

302. As far as Richardson was concerned, this meeting was a "last ditch effort" to follow up on his November letter. (Richardson, T. 674) In effect, Richardson was asking Jensen whether Sposato's letter of November 15 represented a final answer from DOJ. (Richardson, T. 676)

303. Richardson perceived that Jensen was tentative and noncommittal and he received no indication of what was going to happen. (Richardson, T. 674)

304. Richardson received a response to his inquiry by letter dated January 15, 1986 from Jensen in which Jensen said in effect that Sposato's November 15, 1985 letter was a serious offer and that consideration of INSLAW's proposal for expanded or revised use of PROMIS would be further delayed due to DOJ's review of its overall case management needs. (Richardson, T. 679; PX 202) Richardson considered this letter to be a "take it or leave it" letter and to be "... more of the same, i.e., more stalling on negotiations and indefinite deferment of any serious consideration of our proposals." (Richardson, T. 679) This letter was really an "offer that condemns INSLAW to death." (Richardson, T. 711)

305. Subsequent to receipt of this letter, in 1986 Richardson concluded that INSLAW had no other alternative but to file suit. (Richardson, T. 680; PX 204) Despite his natural proclivity to work patiently through governmental processes, Richardson decided that he had failed at every step of the way in his efforts to obtain a fair and impartial process on behalf of INSLAW. (Richardson, T. 680) This inaction on the part of DOJ was particularly distressing to Richardson in light of INSLAW's substantial contributions to the administration of justice, and because of the addition of \$250 million in one year to Federal revenues due to PROMIS-generated computerized debt collections activity.

(Richardson, T. 712; PX 167) In fact, Richardson believed that he may have poorly advised INSLAW in continuing on with its efforts to obtain consideration on the merits of its concerns from DOJ. (Richardson, T. 680)

306. Based on all of his observations, Richardson concluded that the strongest hypothesis was that there was some degree of bias at the higher levels of DOJ which insulated the strongly evidenced bias at lower levels of DOJ from any substantive inquiry. (Richardson, T. 737)

X. JENSEN'S BIASED ATTITUDE AGAINST INSLAW AND HIS
INDIFFERENCE TO INSLAW'S REPEATED COMPLAINTS OF MISCONDUCT
BY OTHER DOJ OFFICIALS

A. DEPUTY ATTORNEY GENERAL D. LOWELL JENSEN HAD A
PREVIOUSLY DEVELOPED NEGATIVE ATTITUDE ABOUT PROMIS
AND INSLAW

307. Jensen adopted as his own view the notion, published in 1980 in the book, Improving Prosecution?, that it was a mistake for DOJ's Law Enforcement Assistance Administration (LEAA) to have selected INSLAW's PROMIS case tracking software for nationwide diffusion when the DALITE case tracking software developed under Jensen's auspices in Alameda County, California, was also available and may, according to Jensen, have been superior to PROMIS. (PX 328 [Jensen] at pp. 48-51, 59-60)

308. In April, 1981, immediately after being appointed to the U.S. Department of Justice as Assistant Attorney General for the Criminal Division, Jensen volunteered to INSLAW employees the belief that the initial two generations of

INSLAW's PROMIS software were inferior to the corresponding generations of the DALITE software. (PX 328 [Jensen] at pp. 51-52)

309. In 1981, Jensen expressed to Associate Deputy Attorney General Stan Morris his lack of enthusiasm about the 1981 DOJ decision to install the PROMIS software in the 20 largest U.S. Attorneys' Offices. (PX 328 [Jensen] at pp. 49-51; PX 331 [Morris] at pp. 62)

B. JENSEN'S CLOSE INVOLVEMENT IN THE PROMIS CONTRACT AS RANKING DOJ OFFICIAL ON THE PROMIS OVERSIGHT COMMITTEE AND IMMEDIATE ORGANIZATIONAL SUPERIOR OF THE EXECUTIVE OFFICE DURING THE PERIOD OF BREWER'S MISCONDUCT AGAINST INSLAW

310. While Assistant Attorney General for the Criminal Division, Jensen attended PROMIS Oversight Committee meetings. (PX 328 [Jensen] at pp. 83-84)

311. Brewer testified that one of his duties as PROMIS Manager for the Executive Office was briefing Jensen's staff while Jensen was head of the Criminal Division. (Brewer, T. 1604, 1661-1662)

312. The Executive Office reported directly to Jensen when he was Associate Attorney General and then began reporting directly to the Deputy Attorney General when Jensen was promoted to that position. (Brewer, T. 1661-1662; Tyson, T. 1534-1535)

313. About the time that Jensen was promoted to Associate Attorney General, ranking DOJ official on the PROMIS Oversight Committee and immediate organizational superior of

the Executive Office, Videnieks first suspended the payment of costs to INSLAW under the PROMIS Contract. (PX 98) The July 18, 1983, letter to INSLAW from Contracting Officer Videnieks, that sought to justify the suspension of almost a quarter of a million dollars in payments due INSLAW under the Contract, showed Associate Attorney General Designate Jensen as the number one "cc". (PX 98) Videnieks testified that he never met Jensen and cannot account for why he copied the payment suspension letter to Jensen but failed to copy the DOJ Director of Procurement, his immediate superior. (Videnieks, T. 1869-1871)

314. Tyson told McWhorter about a Presidential Appointee biased against INSLAW. (PX 330 [McWhorter] at pp. 76-77)

315. When Hamilton in May 1983, complained to Tyson about Brewer's misconduct against INSLAW, Tyson told Hamilton that Brewer was not INSLAW's only problem because there was a Presidential Appointee in the current Administration who was so antagonistic to PROMIS and INSLAW that the nationwide PROMIS implementation contract was in jeopardy. (Hamilton, T. 202) Hamilton deduced that Tyson was referring to Jensen, then Assistant Attorney General for Criminal and soon to be promoted to Associate Attorney General. (Hamilton, T. 203)

316. In December 1983, INSLAW counsel Richardson met with Assistant Attorney General Rooney in an attempt to resolve both the payment-suspension problem and a word processing hardware problem. There was every indication that the meeting

would lead to constructive resolution of the problems.
(Richardson, T. 641-644)

317. One week later, on December 29, 1983, Rooney made a favorable report on his meeting with Richardson to the PROMIS Oversight Committee meeting chaired by Jensen; Rooney then left the meeting early. Subsequent to Rooney's departure, Jensen and the other participants at the meeting approved an effort to terminate for default the word processing part of the INSLAW contract. (Richardson, T. 643-644)

318. Rooney was clearly embarrassed by the inconsistency of his report to the PROMIS Oversight Committee and the subsequent effort to terminate for default the word processing part of the INSLAW contract. (Richardson, T. 644, 697-698)

319. In February 1984, DOJ Procurement Counsel William Snider issued a written legal opinion to the effect that DOJ lacked sufficient legal justification for a default termination of the INSLAW contract. (PX 336 [Snider] at pp. 127-131)

320. In February 1984, Brewer telephoned Hamilton to tell him that Jensen had just decided to terminate the word processing part of the INSLAW contract for convenience. (Hamilton, T. 207)

321. In February 1984, Jensen acknowledges he may have sent word to Hamilton through Donald Santarelli encouraging INSLAW to submit a proposal to expand the computer part of the contract, absolving INSLAW of blame for the word processing part of the contract, and promising to look with favor on

finding the funds for the expansion. (PX 328 [Jensen] at pp. 10-13)

322. Jensen failed to reveal this communication to either of the DOJ entities that would need to know about it if it were to lead to any constructive action -- the Executive Office for U.S. Attorneys (Tyson, T. 1567-1568) or the Justice Management Division (PX 343 [Wallace] at pp. 58-59).

C. DURING THE PERIOD OF THE AUTOMATIC STAY, JENSEN WAS REPEATEDLY MADE AWARE OF INSLAW'S COMPLAINTS ABOUT BREWER BUT TOOK NO CORRECTIVE ACTION

323. Elliot Richardson and Don Santarelli visited Acting Deputy Attorney General Jensen on March 13, 1985, to ask for an immediate investigation into INSLAW's complaints about Brewer; a process for fair and expeditious resolution of the contract disputes that had propelled INSLAW into bankruptcy; and DOJ consideration of the larger public interest involved in preserving INSLAW as a unique asset for both U.S. Attorneys and the state and local prosecutors and courts. (Richardson, T. 658-660; PX 328 [Jensen] at pp. 22-24)

324. Jensen appointed his aide, Jay Stephens, to follow through on the matters raised by Richardson and Santarelli. (PX 328 [Jensen] at pp. 24-25, 37-38; PX 339 [Stephens] at p. 40; Richardson, T. 661)

325. Although Jensen testified that he believed an investigation of Brewer's conduct against INSLAW had been conducted, in fact neither Stephens nor the designated agency ethics officer ever conducted such an investigation. (PX 328

[Jensen] at pp. 25-26; PX 339 [Stephens] at pp. 47-48; PX 343 [Wallace] at pp. 44-46, 210-211; Sposato, T. 2267-2270)

326. While Jensen in his deposition recognized the general principle that it is a bad idea for the government to hire an individual to supervise a contract with that individual's former employer because of the inherent bias either against or in favor of the former employer, his deposition testimony shows that, to put it most charitably, he somehow failed to recognize the obvious applicability of this general principle to Brewer and INSLAW.

Jensen became aware of the July 1985 written opinion of U.S. Bankruptcy Judge Bason questioning the motivation of the DOJ in the INSLAW case and raising the possibility of a personal vendetta on the part of Brewer, but Jensen testified that he did not think the concern rose to the level of requiring a referral to the Office of Professional Responsibility. (PX 328 [Jensen] at p. 37)

327. During the very period in the early stages of the INSLAW bankruptcy when Jensen was asked but failed to investigate Brewer, Brewer was engaged in an unlawful and unjustified effort to bring about INSLAW's liquidation through conversion to Chapter 7. (In Re INSLAW, Inc., Debtor, No. 85-00070 (Bankr. D.D.C., July 20, 1987), Order Granting Debtor's Motion to Obtain Independent Handling)

328. According to Jensen's aide, Jay Stephens, Jensen's subordinates learned to "read between the lines" to determine what Jensen expected them to do because Jensen would

frequently not state his expectations explicitly. (PX 339 [Stephens] at pp. 49-50)

329. Brewer sought and obtained assistance for his unlawful plan from Thomas Stanton, Director of the Executive Office for U.S. Trustees. (In Re INSLAW, Inc., Debtor, No. 85-00070; June 12, 1987 Hearing at 1012) Stanton reported directly to the Deputy Attorney General, D. Lowell Jensen. (In Re INSLAW, Inc., Debtor, No. 85-00070; June 3, 1987 Hearing at 776)

330. During a December 1985 meeting with Richardson and Hamilton, Jensen failed to respond on the merits to complaints about Brewer's misconduct but did gratuitously volunteer his belief that INSLAW's PROMIS software was inferior to both the DALITE software developed under Jensen's auspices in Alameda County, California, and the case tracking software recently developed by the FBI. (Hamilton, T. 214-215; PX 328 [Jensen] at pp. 43-46)

331. In a written reply in July 1986 to the Senate Judiciary Committee, Jensen responded to a question from Senator Paul Simon about "Jay Stephen's investigation of the DOJ administration" of the INSLAW contract by stating that INSLAW representatives had sought new contracts from Jensen and Jensen's intervention in the contract dispute negotiations. Jensen failed to disclose the fact that Richardson and Santarelli had asked for an urgent investigation of Brewer's misconduct, which Jensen failed to follow through on. (PX 275)

332. In March 1987, Tyson wrote to Judge Jensen vowing to continue denying under oath that he had told Hamilton about a Presidential Appointee biased against INSLAW and that Jensen was the Presidential Appointee. (PX 208; PX 328 [Jensen] at pp. 63-64; PX 341 [Tyson] at pp. 191-194)

XI. DOJ'S FAILURE TO INVESTIGATE AND REMEDY INSLAW'S CLAIMS OF BIAS PRIOR TO THE BANKRUPTCY

333. The record is clear beyond any doubt that both before and after the filing of INSLAW's bankruptcy petition, Hamilton and INSLAW complained repeatedly about Brewer's bias and prejudice and absolutely nothing happened at DOJ. When Hamilton personally complained, DOJ wrongly considered it to be "sour grapes" on his part. When INSLAW's outside representatives complained about Brewer's bias, such as Richardson, Jaffee and Santarelli, all of whom were persons of unquestioned integrity, DOJ wrongly considered this to be "political pressure." Other than simplistically asking Brewer whether he had been fired by INSLAW or whether he was biased against INSLAW, DOJ did nothing whatsoever to investigate the substance of these most serious assertions. Moreover, DOJ's explanation that it did nothing because it had no substantiation is absurd, since the substantiation not only was massive and available but was indisputable.

334. During the course of the PROMIS Project, but prior to INSLAW's bankruptcy petition, a number of claims of lack of impartiality were made on behalf of INSLAW to DOJ. (Hamilton, T. 198-199, 2596-2598; Richardson, T. 659-660, 673;

PX 336 [Snider] at pp. 42-44) These claims were in reference to Brewer and his colleagues, including Rugh and Videnieks. (Hamilton, T. 226, 2596-2598; Richardson, T. 659; Jensen 24-25, 68-72; Sposato, T. 2261, 2266; PX 341 [Tyson] at pp. 78-80, 136-138; Brewer, T. 1719; PX 330 [McWhorter] at p. 47)

335. The procedure for handling claims of bias or conflict of interest was well-established at DOJ. (PX 330 [McWhorter] at pp. 8-10; PX 338 [Sposato] at pp. 9-12) Oral or written, formal or informal claims were all to be referred in the first instance to the department, office or agency designated ethics official ("DEO") who generally had designated his/her assistant as the deputy DEO. (PX 330 [McWhorter] at pp. 8-10; McWhorter, T. 1347; PX 338 [Sposato] at pp. 9-12) The deputy DEO was under an obligation to then refer such claims to DOJ's Office of Professional Responsibility ("OPR") for investigation and disposition. (PX 330 [McWhorter] at pp. 8-10; McWhorter, T. 1346-1347; PX 338 [Sposato] at pp. 9-12)

Certain government regulations require referral for an independent investigation by OPR in the event of charges of conflict of interest. A claim of personal bias is the quintessential conflict of interest, particularly where it is substantiated by being linked to ^{the individual's} having been fired from a prior job. Unlike owning stock in a corporation, which sometimes may only create an appearance of a conflict of interest, personal bias by definition always constitutes an actual conflict of interest.

336. The first charges of bias and lack of impartiality or prejudice against Brewer were made by INSLAW's attorney Roderick Hills to Morris in May 1982. (Hamilton, T. 138, 198; Rogers, T. 426) In particular, INSLAW complained of Brewer's intransigent attitude against resolution of the matter of INSLAW's proprietary rights to privately-financed enhancements, and alerted Morris to the fact that Brewer had been fired by INSLAW. (Hamilton, T. 138) On this occasion, no referral to OPR occurred, nor was any investigation of the charges conducted, although Morris directed that Brewer be removed from DOJ's consideration of the proprietary enhancements issue. (PX 324 [Brewer] at pp. 168-171) Notwithstanding this direction, Brewer remained at all times fully involved in such consideration. (PX 330 [McWhorter] at pp. 46-51; PX 324 [Brewer] at pp. 456-458, 464)

337. The next claim of bias against Brewer came in January 1983 when INSLAW's attorney Harvey Sherzer complained to Kamal Rahal, Director of Procurement for JMD, about Brewer's and Videnieks' hostility towards INSLAW. (Hamilton, T. 226) As to these claims, there is nothing in the record to suggest that Rahal referred them to OPR. (Hamilton, T. 226-227)

338. By letter of February 10, 1983, INSLAW's counsel Harvey Sherzer again complained to various officials of the DOJ about improper motivation of DOJ personnel at a February 4, 1983 meeting, and apprised them of his concern that DOJ was motivated by a desire to seek retribution against INSLAW. (Sherzer, T. 959-961; Brewer, T. 1662-1665; PX 58) In

addition, Sherzer requested that the atmosphere of bias, unfounded accusation and hostility be corrected "... if need be through a change of administrative personnel on the Government's side or otherwise." (PX 58)

339. On May 2, 1983, Hamilton met with William Tyson to complain about the biased administration of the PROMIS Contract on the part of Brewer and Videnieks, and to state that Brewer's conduct may be the result of a lack of impartiality against Hamilton for having previously fired Brewer. (Hamilton, T. 199; PX 341 [Tyson] at pp. 136-138, 140-142; Tyson, T. 1531-1532, 1550-1551) Hamilton specifically identified ten to twelve incidents which appeared to have been the result of Brewer's bias, including Brewer's conduct at the April 19, 1982 meeting in connection with the BJS contract and the spreading of false information concerning INSLAW's financial condition among personnel in various U.S. Attorney's offices. (Hamilton, T. 199-201) Tyson responded that he took seriously these sort of allegations and that he would conduct an inquiry. (Hamilton, T. 202; Tyson, T. 1554-1555) Again, no referral to OPR occurred, nor did Tyson do anything other than to ask McWhorter whether Brewer had been fired by the Institute. (PX 341 [Tyson] at pp. 140-142; Tyson, T. 1552, 1556; Hamilton, T. 208) INSLAW never even got a report back from Tyson on this matter. The government began to suspend payments on its contract cost expenses later on in May 1983. (Hamilton, T. 208; Tyson, T. 1554-1555)

340. At this May 2 meeting, Tyson informed Hamilton that Brick Brewer was not INSLAW's only problem because there was a Presidential Appointee in the current Administration who was so antagonistic to PROMIS and INSLAW that Tyson had to maneuver to keep him away from meetings of the U.S. Attorneys for fear that he would jeopardize the success of the nationwide PROMIS implementation contract. (Hamilton, T. 202) INSLAW concluded that Tyson was referring to Jensen because Jensen was the only DOJ presidential appointee who had access to U.S. Attorney's meetings and who also had a prior negative opinion about PROMIS. (Hamilton, T. 203, 207) Tyson also had told McWhorter about a Presidential Appointee biased against INSLAW. (PX 330 [McWhorter] at pp. 76-77)

341. Again in 1983, a similar complaint about Brewer's bias was made to Laurence McWhorter. (Hamilton, T. 207-208) As of this time, McWhorter was the deputy DEO for EOUSA and thoroughly understood the responsibilities of that position. (PX 330 [McWhorter] at pp. 8-10) McWhorter told Hamilton that he and Tyson did not believe that Brewer was behaving in a biased fashion. (Hamilton, T. 208) Moreover, McWhorter told INSLAW that he was a good friend of Brewer, that Brewer had been a member of his wedding party and that he was an investment partner with Brewer. (Hamilton, T. 208; McWhorter, T. 1344-1345) McWhorter's only response to the Hamilton complaints was to ask Brewer if he had been fired by INSLAW. (PX 330 [McWhorter] at pp. 13-17) McWhorter did not refer the matter to OPR nor conduct any further inquiry. (PX 330

[McWhorter] at pp. 8-10; McWhorter, T. 1346-1347; Hamilton, T. 208)

342. In October 1983, Sherzer complained to the Director of DOJ's Procurement staff about the outright hostility and rampant bias of Videnieks. (Brewer, T. 1662-1665)

343. In December 1983, Richardson contacted Deputy Attorney General Schmults because of his concern with the indications of bias in the Executive Office, and Schmults arranged a meeting between Richardson and Rooney to try to address "the consequences of bias." (Richardson, T. 641, 642)

344. In the summer of 1984, INSLAW consulted with Irving Jaffee, formerly DOJ's most senior career lawyer on government contracts, and requested him to take a fresh look at the bias issue. (Hamilton, T. 210) Jaffee attempted to get DOJ to remedy this situation during several meetings with DOJ. (Hamilton, T. 210) At one such meeting, Jaffee discussed with DOJ officials, including Brewer, Videnieks, James Johnston and Jeffrey Lovitky (an attorney on the staff of JMD's General Counsel) Videnieks' lack of independence from EOUSA, the effort to drive INSLAW into bankruptcy and the obvious lack of good faith on DOJ's part in dealing with INSLAW. (Hamilton, T. 211) Jaffee was specifically referring to Brewer when he made this statement. (Hamilton, T. 211-212) No investigation ^{instigated} ~~was instigated~~. (Brewer, T. 1662-1665, 1721)

345. In August 1984, Hamilton had a discussion with Brewer during which he contended that Brewer was biased against Hamilton and INSLAW because he had been fired. (PX 324)

[Brewer] at pp. 287-289; Brewer, T. 1641-1662; Hamilton, T. 209) Brewer declined to refer these claims to OPR or to any other group or individual at DOJ although he understood his obligation to do so. (PX 324 [Brewer] at pp. 87-88; Brewer, T. 1664-1665) Brewer's explanation for this failure on his part was that Hamilton's complaint was informal, as opposed to formal, and thus not reportable. (PX 324 [Brewer] at pp. 287-289; Brewer, T. 1664) Hamilton specifically asked Brewer to recuse himself which Brewer refused to do. (Hamilton, T. 209; Brewer, T. 164)

346. Again in the summer of 1984 at Hamilton's request, John Shenefield, a law partner of Elliot Richardson and a former DOJ senior official, talked with Tyson and William Van Stavoren about Brewer's bias. (Hamilton, T. 213) No inquiry was initiated. (Brewer, T. 1662-1665)

347. In the fall of 1984, Janis Sposato, General Counsel of JMD was informed by INSLAW that Brewer had been terminated from his employment at INSLAW and accordingly harbored strong negative opinions about INSLAW. (PX 338 [Sposato] at pp. 124-127; Sposato, T. 2266; Hamilton, T. 2596-2598) Although Sposato was the deputy DAEO for JMD and was fully aware of her responsibilities in that regard, her only response to that claim was to ask Brewer whether he had been fired by INSLAW. (PX 338 [Sposato] at pp. 128-130; Sposato, T. 2258-2261, 2263) She did not question INSLAW personnel about their allegation nor did she refer the matter

to OPR. (PX 338 [Sposato] at pp. 125-126; Sposato, T. 2267) 28/

as an institutional decision by DOJ, exceptionally with at the highest level, simply to ignore serious questions of ethical propriety, made repeatedly by persons of unquestioned propriety and integrity. This failure to investigate constituted bad faith, wantonness, wantonness and oppression.

XII. DOJ'S UNLAWFUL AND IMPROPER CONDUCT CONTINUES UNCHANGED THROUGHOUT THE PERIOD OF REINVESTIGATION

330. As explained at some length in this Court's opinion in this proceeding reported at 75 Bankr. L.R. 226-228 (1987), a fundamental, significant part of the Bankruptcy Code's program to assist companies out of Chapter 11 bankruptcy is an automatic stay which precludes creditors and others from exercising control over the property of the bankrupt, and stays "all harassment." The nature and existence of the automatic stay were well understood at DOJ and, on at least one occasion, DOJ's [redacted] from DOJ's Civil Division counseled ENUSA and DOJ about the effect of the automatic stay. (PX 338 [Sposato] at pp. 24-29, 192-193)

331. This Court has found, (i) in an extended bench ruling on June 13, 1987 (which is incorporated herein by reference) as a result of four days of hearings in 1987

28/ Despite DOJ's continual failure to investigate INSLAW's repeated claims of bias by DOJ officials, DOJ officials moved quickly to allege misconduct against Joe N. Pate, a former LEAA employee who was acting briefly as a consultant to INSLAW. (PX 353; Sposato, T. 2263-2265) DOJ subsequently informed Mr. Pate that his representation of INSLAW regarding the Executive Office contract was permissible. (PX 353)

349. This failure even to begin to investigate INSLAW's complaints was outrageous and indefensible. It constituted an institutional decision by DOJ, consciously made at the highest level, simply to ignore serious questions of ethical impropriety, made repeatedly by persons of unquestioned probity and integrity. This failure to investigate constituted bad faith, vexatiousness, wantonness and oppressiveness.

XII. DOJ'S UNLAWFUL AND IMPROPER CONDUCT CONTINUES UNABATED THROUGHOUT THE PERIOD OF BANKRUPTCY

350. As explained at some length in this Court's opinion in this proceeding reported at 76 Bankr. 224, 226-228 (1987), a fundamental, significant part of the Bankruptcy Code's program to assist companies out of Chapter 11 bankruptcy is an automatic stay which precludes creditors and others from exercising control over the property of the bankrupt, and stops "all harassment." The nature and existence of the automatic stay were well understood at DOJ and, on at least one occasion, Dean Cooper from DOJ's Civil Division counseled EOUSA and JMD about the effect of the automatic stay. (PX 338 [Sposato] at PP. 78-79, 192-193)

351. This Court has found, (i) in an extended bench ruling on June 12, 1987 (which is incorporated herein by reference), as a result of four days of hearings in In re INSLAW, Inc., Case No. 85-00070, at which DOJ appeared and offered evidence, (ii) in an Order dated July 20, 1987, and (iii) in Findings of Fact and Conclusions of Law issued on this

date in that case, and this Court incorporates into these findings in this adversary proceeding the following:

(a) INSLAW filed a petition under Chapter 11 of the Bankruptcy Code on February 7, 1987.

(b) Sometime between February 7 and February 20, 1985, Brewer discussed the INSLAW Chapter 11 bankruptcy case with Thomas J. Stanton, Director of the Executive Office of United States Trustee ("EOUST"). At the time of Brewer's discussion with Stanton, EOUSA and DOJ believed that they had an interest in seeing that INSLAW was liquidated in order to weaken or eliminate INSLAW's ability to press its contract disputes with DOJ. As a result of the discussion, Stanton made a commitment to Brewer that he would undertake to cause the conversion of INSLAW's Chapter 11 case to a Chapter 7 liquidation case.

(c) Stanton made this commitment because he wanted to curry favor with the EOUSA and with higher DOJ officials in order to win the support of these higher officials for anticipated legislation that was to make permanent the then temporary United States Trustee program which he headed.

(d) Acting on his commitment to Brewer, Stanton contacted William C. White, the local United States Trustee whose office had jurisdiction over the INSLAW bankruptcy, and pressured him to convert the case to a Chapter 7 liquidation. When White resisted, Stanton sought to have the office of Cornelius Blackshear, then the United States Trustee for the Southern District of New York, detail Blackshear's assistant.

trustee, Harry Jones, to EOUST, Washington, D.C., where Jones would be assigned to accomplish the conversion. Blackshear refused to permit this.

(e) Thereafter, Stanton retaliated against White for his resistance and imposed administrative retribution on White's office by refusing to approve additional staff during a period in which the office experienced a substantial increase of complex cases in its caseload.

(f) In July 1985, White was concerned that Stanton might still seek to convert or otherwise interfere with INSLAW's Chapter 11 bankruptcy, either by bringing Jones down from New York or by some other means. White requested that this Court supplement a confidentiality order proposed by INSLAW's counsel by adding language which explicitly prohibited White from disseminating any confidential information about INSLAW to anyone associated with DOJ or EOUST. The Court incorporated the restrictive language in its July 11, 1985, confidentiality order. The purpose of White's request was to "protect" himself, his office and Jones, i.e., to assure that even if Stanton succeeded in obtaining Jones' assignment to EOUST to work on the INSLAW case, Jones would be unable, under the terms of the July 11, 1985 Order, to obtain information necessary to seek conversion or otherwise interfere with INSLAW's Chapter 11 case, and White and his office would no longer be subject to Stanton's pressure.

(g) The fact of Stanton's commitment to Brewer to seek INSLAW's liquidation was relayed by Brewer to Rugh on

or before February 20, 1985. Brewer told Rugh that Stanton had said the INSLAW bankruptcy would be converted to a Chapter 7 liquidation within 30 to 60 days. On February 20, 1985, acting on this information, Rugh telephoned Peter Videnieks, the Contract Officer on the PROMIS contract, and told him that Brewer had talked to Stanton and that there was "no way" the INSLAW bankruptcy would continue as a Chapter 11 case and that INSLAW probably would be liquidated within 30 to 60 days. Rugh told Videnieks that in view of the impending liquidation, DOJ would need to obtain a new site for the Government computer then on INSLAW's premises in Lanham, Maryland.

(h) On or about February 21, 1985, Rugh telephoned Gregory McKain, a senior INSLAW software programmer who had worked on the PROMIS contract since its inception, and told him that EOUSA had found out from the "trustees" that INSLAW could not make it in Chapter 11 and that the company would probably go into Chapter 7 in 30 to 60 days. Rugh then discussed with McKain the possibility of working for DOJ on the remainder of the PROMIS project under a six-month sole source contract, assuming INSLAW did go out of business.

(i) As a proximate result of Rugh's call to McKain, INSLAW's executives had to spend time calming McKain and overcoming his concern that he would be unemployed within 30 to 60 days, since he had earlier been led to believe by INSLAW and its counsel that the Chapter 11 process would likely extend for months, if not years, during which time INSLAW would be able to continue operating its business. Also, INSLAW's

executives had to spend time assuring that other employees did not become similarly alarmed. Finally, INSLAW had to incur legal fees and expenses attributable to efforts by its counsel to investigate and dispute Rugh's claim.

(j) Good employee morale of a software applications company like INSLAW is a valuable asset of such a company. Good employee morale is also essential to INSLAW's submitting a feasible Chapter 11 Plan of Reorganization because of the services to be rendered by its employees to its customers, both during the Chapter 11 and after confirmation.

(k) At all times relevant, there was no factual or legal basis upon which conversion of INSLAW's Chapter 11 case could lawfully have been sought, and Stanton knew that this was so.

(l) At all times relevant, Stanton, Brewer, and Rugh were employees of DOJ acting within the scope of their employment.

(m) The acts of Stanton, Brewer and Rugh that are described above were done in bad faith, vexatiously, in wanton disregard of the law and the facts, and for oppressive reasons -- namely, to drive INSLAW out of business and into a Chapter 7 liquidation bankruptcy.

(n) In sum, DOJ, acting through its employees, unlawfully, intentionally and willfully sought to cause the conversion of INSLAW's Chapter 11 reorganization case to a Chapter 7 liquidation case without justification and by improper means.

352. Rugh of DOJ's Executive Office attempted to recruit an INSLAW software engineer during the month INSLAW filed for protection, telling the INSLAW employee, Gregory McKain, that the "trustees" had told the Executive Office that INSLAW would probably be liquidated within 30-60 days.

XIII. DOJ'S BAD FAITH NEGOTIATIONS AND OTHER IMPROPER CONDUCT DURING THE PERIOD OF BANKRUPTCY

A. DOJ'S CONTINUED IMPROPER IMPLEMENTATION AND USE OF PROMIS SOFTWARE

353. At the same time that INSLAW was desperately trying to persuade DOJ to pay its outstanding vouchers, Brewer and his staff were actively, but secretly, considering implementing PROMIS in U.S. Attorneys Offices with EOUSA in-house personnel, which consideration culminated in August of 1984 with a proposal by Snyder to Brewer for implementing PROMIS in the remaining offices. (PX 154) Rugh had also been very active in formulating this proposal. (PX 154)

354. Significantly, this proposal contemplated that "... INSLAW will provide the software which will be the basis for the standardized version of PROMIS that EOUSA will implement," i.e., that EOUSA would utilize PROMIS software from INSLAW for EOUSA's in-house implementation of the remaining U.S. Attorneys Office. (PX 154)

355. This proposal was intentionally not disclosed to INSLAW, since it would have revealed the treachery of DOJ in obtaining INSLAW's "goods." (PX 73; PX 337 [Snyder] at pp. 338-339)

356. Brewer and his staff specifically recognized in their August, 1984 proposal that EOUSA would utilize PROMIS software from INSLAW for EOUSA's in-house implementation of the remaining U.S. Attorneys' Offices. (PX 154) Indeed, Brewer planned a meeting between the technical staffs of INSLAW and OMISS so that OMISS employees could "learn as much as possible about INSLAW's procedures regarding the Docket and Reporting System data base conversion process [i.e., use of the Batch Update subsystem], the PROMIS data base adjustment and purge programs, and other miscellaneous PROMIS facilities." (PX 309)

357. Senior officials were aware that EOUSA was implementing and using this PROMIS software in far more than the 20 largest U.S. Attorneys Offices. (PX 166; PX 207; PX 308) On January 8, 1985, Janis Sposato, JMD's General Counsel, reminded the Deputy Assistant Attorney General for Administration in writing that EOUSA was implementing and using PROMIS software. (PX 166) In fact, at the National Administrative Officers' Conference in February 1985, OMISS distributed a paper entitled "PROMIS-An Overview," describing the plans of the Executive Office to complete the PROMIS implementation themselves, without further assistance from INSLAW. (PX 168) Notwithstanding, a report transmitted to Stephens from Tyson on April 18, 1985, admits that OMISS did not have either sufficient expertise or manpower to design or implement major software enhancements to PROMIS. (PX 178)

358. At no time prior to the institution of the instant lawsuit had anyone from DOJ informed INSLAW that it was

the intention of DOJ to implement PROMIS beyond the 20 offices specified in the contract. (Hamilton, T. 234-235) On or about September 9, 1985, INSLAW learned that EOUSA was manufacturing copies of PROMIS software for its own implementation and use. (PX 193) In a letter to Assistant Attorney General Wallace, INSLAW's Hamilton complained about DOJ's unauthorized use of such software:

The Government's continued enjoyment of and indeed manufacture of these proprietary enhancements in the absence of any negotiated agreement for payments, risks the very dissipation that I am responsible for avoiding. (PX 193)

359. INSLAW received no substantive response from DOJ on this complaint and thereafter filed a monetized claim for proprietary enhancements in the amount of \$2,910,000, predicated on INSLAW's customary licensing fees for the number of DOJ PROMIS installations about which INSLAW then knew. (PX 197) This claim was rejected in its entirety by Janis Sposato on November 15, 1985 without explanation in her letter response to INSLAW's request for a global settlement. (PX 199; Sposato, T. 2292-2296)

360. In addition to its unauthorized and improper use of INSLAW's privately financed enhancements, such in-house implementation of PROMIS by EOUSA was essentially a theft of the contract option to extend the implementation to ten additional offices without any payment to INSLAW. (Gizzarelli, T. 497)

361. EOUSA has implemented PROMIS computer software in 40 U.S. Attorney's offices, with a present goal (as of the date of trial) of 45 such offices by September 30, 1987. (Rugh, T. 1509; PX 206; PX 276; PX 355) DOJ's actual implementation of such PROMIS computer software took place after INSLAW filed its bankruptcy petition. (Rugh, T. 1510; Brewer, T. 1725; PX 206; PX 264; PX 276; PX 355) DOJ made the decision to perform such implementation "willingly," "knowingly," "intentionally," and with an assumption of the risk that DOJ might be wrong in its view of INSLAW's claim of proprietary rights in PROMIS. (Brewer, T. 1725-1726)

362. DOJ converted INSLAW's Enhanced PROMIS by trickery, fraud and deceit, and DOJ has used and continues to use Enhanced PROMIS not only in the 20 U.S. Attorney's offices entitled to use a different non-proprietary version of PROMIS, but also in approximately 25 other U.S. Attorney's offices.

B. THE EFFECTS OF BIAS ON THE 1985 NEGOTIATIONS

363. It was specifically understood among senior DOJ officials that proprietary enhancements were an important issue for negotiation. (Hamilton, T. 231; Wallace, T. 181-184; Sposato, T. 2299) Indeed, Hamilton specifically requested that this issue be added to the agenda. (Hamilton, T. 388; PX 176) Sposato agreed to do so but also added that DOJ had a very different view of the issue than did INSLAW. (Hamilton, T. 389; PX 176)

364. At the outset of the 1985 negotiation, DOJ and INSLAW both understood that the negotiations had to result in some payment by DOJ to INSLAW or else INSLAW would not have been negotiating. (Sherzer, T. 1043-1045) Any other conclusion would have been illogical given that INSLAW was in bankruptcy. (Sherzer, T. 1043)

365. The negotiations primarily were conducted by Janis Sposato, JMD's General Counsel, and Dean Cooper, on behalf of DOJ and Harvey Sherzer and Kathy Little, attorneys for INSLAW, along with William Hamilton and Nancy Hamilton. (Hamilton, T. 229-230; PX 338 [Sposato] at p. 49; Sposato, T. 2279) At the outset of the discussions, Sposato unilaterally informed INSLAW that the negotiations would go forward on the issues, one issue at a time, and proceeding to the next issue only after final agreement had been reached concerning the preceding issue. (PX 338 [Sposato] at pp. 74, 155-156; Hamilton, T. 387-388)

366. During the course of these negotiations, Sposato relied heavily, if not exclusively, upon Brewer's staff for technical advice on the PROMIS contract. (PX 338 [Sposato] at pp. 242-248; Sposato, T. 2271, 2281, 2293, 2301-2302)

367. At the first negotiating session, Jeffrey Lovitky responded to an INSLAW complaint about Brewer's bias by stating that "... [w]hy bring up Brewer's misconduct now, it's history." (Hamilton, T. 227) Sherzer's response was "... because it has everything to do with why this company is in bankruptcy." (Hamilton, T. 227)

368. At a negotiating session on May 17, 1985, Sposato informed INSLAW that she had been under a misunderstanding about INSLAW's computer center costs. (PX 181; Hamilton T. 379-380) Specifically, Sposato had not known that 21, and not three persons billed time to INSLAW's computer center cost pool from two locations, and not one location. (PX 181; Hamilton, T. 379-380) In this regard, Sposato told INSLAW that "... this blows my mind. No wonder the two sides are so far apart." (Hamilton, T. 380)

369. In a telephone conversation after that meeting, Sposato further stated to Hamilton that "her people" would respond to this new information by arguing that it was "double billing." (Hamilton, T. 240)

370. This error had previously been made by Rugh when his 1983 analysis of INSLAW's costs resulted in the suspension of substantial amounts of payments to INSLAW. (PX 65)

371. Based on this revelation, INSLAW recommended to Sposato that she retain an independent outside computer consultant to advise her on the issues. (PX 181) Sposato rejected INSLAW's recommendation and continued to rely heavily upon Brewer's staff. (PX 338 [Sposato] at pp. 246-248)

372. In response to INSLAW's initiatives with senior DOJ officials, Sposato got more and more intransigent in her negotiations. (Hamilton, T. 380) When Sposato made only a modest change in the Government's position, which she described as her best and final offer, after learning of DOJ's fundamental misunderstanding regarding INSLAW's computer center

costs, and when she failed to respond to INSLAW's request to obtain outside technical assistance, INSLAW concluded DOJ was not making a serious effort to resolve fairly the issues on the negotiation agenda. (Hamilton, T. 381-382)

373. During the course of these negotiations, Assistant Attorney General for Administration Lawrence Wallace informed Hamilton that the bias in the EOUSA office was so great that INSLAW could not get fair consideration of its proposals. (Hamilton, T. 219)

374. During these negotiations, Hamilton attempted to bring to a head INSLAW's claim to proprietary enhancements by proposing a global settlement offer to Sposato which included as part of the settlement a resolution of the proprietary enhancements issue. (Hamilton, T. 235; PX 95; PX 188) This proposal resulted from INSLAW's learning that DOJ intended to install PROMIS beyond the 20 contractually specified offices. (Hamilton, T. 236)

375. In this offer, Hamilton proposed to negotiate a global license with EOUSA for INSLAW's proprietary enhancements and for the use of the enhancements in all 94 U.S. Attorney's offices and by EOUSA itself for a set amount of money. (Hamilton, T. 236) This offer was limited to those enhancements not deliverable under the contract. (Hamilton, T. 236) This offer did not seek any money from DOJ for those software items deliverable under the PROMIS contract. (Hamilton, T. 236-237)

376. On the issue of proprietary enhancements in her response to INSLAW's global settlement offer, Sposato rejected any additional obligation on the part of DOJ to pay for "... software obtained pursuant to this contract." (PX 199; Sposato, T. 2294-2295, 2301) Moreover, she demanded that INSLAW recognize DOJ's unlimited right to unrestricted use of PROMIS software, including even unlimited use by other independent contractors. (PX 199) Finally, Sposato informed INSLAW that DOJ would consider FOIA requests for Enhanced PROMIS software but would first give INSLAW the standard ten days' notice prior to responding to the FOIA request. (PX 199)

377. This proposal from INSLAW's point of view was ridiculous because it was tantamount to destroying the company. (Hamilton, T. 238)

XIV. DOJ'S CONTINUED FAILURE TO INVESTIGATE CLAIMS OF BIAS DURING THE PERIOD OF BANKRUPTCY

378. On March 13, 1985, Elliot Richardson and Donald Santarelli met with Lowell Jensen. (Richardson, T. 658-659) One issue discussed during this meeting was a fairly blunt warning about the malevolent effect on INSLAW from Brewer's bias and a description of the substantial injury to INSLAW during the course of the PROMIS contract from this bias. (Richardson, T. 659-660; Jensen 22-24; PX 339 [Stephens] at P. 52) The only result of this meeting with Jensen was the designation of Jensen's assistant, Stephens, as a person who would follow the INSLAW matter on his behalf. (Richardson, T. 661)

379. Jensen failed to initiate an investigation. (PX 328 [Jensen] at p. 24) Stephens did not conduct any inquiry into claims of bias against Brewer nor did he refer the matter to OPR. (PX 339 [Stephens] at pp. 99-100)

380. In March 1985, INSLAW's counsel Charles Work told Jay Stephens that Brewer had a personal vendetta against INSLAW. (PX 339 [Stephens] at pp. 89-90) Stephens did not refer the complaint to OPR nor did he conduct any investigation. (PX 339 [Stephens] at p. 97)

381. In a telephone conversation on July 15, 1985, Wallace informed Hamilton that DOJ was slow in responding to a proposal for new business from INSLAW because his concern about the bias against INSLAW within DOJ prompted his decision to appoint persons outside U.S. Attorney's offices to review the proposal. (Hamilton, T. 219, 223) Hamilton concluded from this call that Wallace would keep Brewer and Videnieks out of this review process, which was a false assumption. (Hamilton, T. 220; PX 179) Brewer was deeply involved in the review process.

382. Throughout the negotiations between INSLAW and DOJ during the Spring and Summer of 1985, Hamilton complained to Sposato about Brewer's bias against INSLAW. (PX 338 [Sposato] at p. 125; Sposato, T. 2261-2266) Hamilton also made such complaints to Wallace, who was Sposato's boss. (PX 338 [Sposato] at p. 125; Sposato, T. 2267) Despite her DAEO responsibilities, Sposato took no action in response to such complaints. (PX 338 [Sposato] at p. 125; Sposato,

T. 2267-2270) She did not refer these claims to OPR. (PX 338 [Sposato] at p. 126; Sposato, T. 2267-2270) Nor did Sposato remove Brewer from any activities with respect to the INSLAW contract as a result of Hamilton's complaints. (PX 338 [Sposato] at pp. 128-129; Sposato, T. 2270)

383. As a rationale for her failure to act, Sposato believed that, except for one occasion at the outset of the 1985 negotiations on which Brewer attempted to influence her thinking, Brewer was not involved in such negotiations. (PX 338 [Sposato] at pp. 247-248; Sposato, T. 2257, 2271-2272) Sposato nonetheless believed that if the allegations of bias were true, there would perhaps be a reason to remove Brewer from administering the PROMIS contract. (Sposato, T. 2262)

384. Brewer had in fact been involved in meetings regarding DOJ negotiation strategy. (PX 179) He had also been involved in preparing a detailed analysis of a proposal INSLAW submitted during the negotiations. (PX 179)

negotiate toward a global settlement with INSLAW but rather to stand firmly behind his final decision denying INSLAW's claims. (PX 188)

385. During these negotiations, Sposato clearly indicated the influence being exercised over her by both, Weinstein and Singer. (Hamilton, T. 211) At one point, INSLAW's belief that a breakthrough in negotiations had occurred was dashed by further evidence that DOJ had not changed its negotiating position when Sposato told Hamilton "let people feel discredited by the concessions I have already

386. Sposato at no time inquired of Brewer as to the nature of his involvement with, or his participation in, the negotiation process. (Sposato, T. 2272-2273)

387. Sposato was aware that Brewer's subordinates Rugh and Snyder, regularly attempted to influence her views concerning INSLAW during the course of negotiating with INSLAW in the Summer of 1985. (PX 338 [Sposato] at p. 248; Sposato, T. 2281, 2306) She met with Rugh and Snyder on a once-a-week or more frequent basis during the negotiations to obtain their technical advice concerning issues arising during such negotiations. (PX 338 [Sposato] at p. 183; Sposato, T. 2281, 2306) Videnieks also continued to press Sposato not to negotiate toward a global settlement with INSLAW but rather to stand firmly behind his final decisions denying INSLAW's claims. (PX 198)

388. During these negotiations, Sposato clearly indicated the influence being exercised over her by Rugh, Videnieks and Snyder. (Hamilton, T. 232) At one point, INSLAW's belief that a breakthrough in negotiations had occurred was dashed by further evidence that DOJ had not changed its negotiating position when Sposato told Hamilton "[m]y people feel discredited by the concessions I have already

made and are unwilling to allow me to make any more concessions." (Hamilton, T. 232-233; PX 338 [Sposato] at p. 261)

389. It was during the course of these negotiations that Sposato concluded that INSLAW's claim to its privately financed enhancements had no merit. (PX 338 [Sposato] at p. 140; Sposato, T. 2292, 2298) In reaching that conclusion, she only consulted with Rugh, Snyder and Videnieks and reviewed the contract. (PX 338 [Sposato] at p. 141; Sposato, T. 2293, 2296) She did not conduct, or cause to have conducted, any independent analysis of the privately-financed enhancements claimed by INSLAW. (PX 338 [Sposato] at p. 140; Sposato, T. 2294-2298) Nor did she make any effort or direct anyone else to corroborate INSLAW's claims to proprietary enhancements. (PX 338 [Sposato] at p. 74; Sposato, T. 2294-2298)

390. Although Jensen knew of the July 1985 opinion questioning the motivation of the DOJ in the INSLAW case and raising the possibility of a personal vendetta on the part of Brewer, Jensen testified that he did not think the concern rose to the level of requiring a referral to the Office of Professional Responsibility. (PX 328 [Jensen] at p. 37)

391. On October 23, 1985, Hamilton wrote to Sposato complaining about a course of conduct by Brewer over several years which clearly indicated a strong bias against INSLAW and which was having a materially adverse effect upon INSLAW. (PX 272)

392. The letter had been prompted by comments made by Brewer to Gizzarelli of INSLAW to the effect that INSLAW should not expect early resolution of its proprietary enhancements dispute with DOJ and that it would take years or forever to resolve the matter. (PX 272; Gizzarelli, T. 544-545)

393. Sposato did not investigate these claims of Hamilton nor did she refer the matter to OPR. (PX 338 [Sposato] at pp. 125-126, Sposato, T. 2267-2270) Her only explanation for her failure to act was that she believed the issue to be "irrelevant." (PX 338 [Sposato] at pp. 127-129; Sposato, T. 2269)

394. Significantly, Sposato specifically informed INSLAW in a letter dated November 15, 1985 that DOJ had no responsibility whatsoever to pay for the proprietary enhancements claimed by INSLAW. (PX 199; Sposato, T. 2294, 2301) Moreover, she demanded that INSLAW recognize DOJ's right to unrestricted use of PROMIS software, including even such unlimited use by DOJ's independent contractors. (PX 199) Finally, Sposato threatened INSLAW that DOJ would consider FOIA requests by the general public for the PROMIS software. (PX 199) ^{29/}

^{29/} Previously, Sposato's superior, Wallace, had specifically acknowledged on March 4, 1985, that in connection with a prior FOIA request:

[INSLAW's codes and software documentation constitute] "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

(Footnote continued on following page.)

395. In response to a letter from U.S. Senator Paul Simon dated June 18, 1986, requesting information as to what steps Jensen had taken to remedy the perceived or actual conflict between Brewer and INSLAW, Jensen responded that Stephens had conducted an inquiry into the claims of bias and had concluded that there was no bias or conflict. (PX 275) Sposato had worked closely with Jensen in preparing his response to Senator Simon's inquiry. (PX 338 [Sposato] at p. 300) In this connection, Sposato did not conduct any investigation into allegations of bias nor did she know of anyone else who conducted such an inquiry. (PX 338 [Sposato] at pp. 300-301; Sposato, T. 2267-2270)

396. Although Jensen testified that he believed an investigation of Brewer's conduct against INSLAW had been conducted, in fact neither Stephens nor the designated agency ethics officer ever conducted such an investigation. (PX 328 [Jensen] 25-26; PX 339 [Stephens] 47-48; PX 343 [Wallace] 44-46 and 210-211; Sposato, T. 2267-2270)

29/

(Footnote continued from previous page.)

... The release of proprietary information received from INSLAW may also be prohibited by 11 U.S.C. §362 (a) which invoked an automatic stay upon INSLAW's filing a bankruptcy petition in IN RE INSLAW, B.R. No. 85-00070 (Bank R. D.C.), which prevents the Government from giving INSLAW's proprietary property to any other person or entity. (PX 171)

397. In August 1986, Hamilton sent a letter to Deputy Attorney General Arnold Burns alleging personal motivation and prejudice on the part of both Brewer and Jensen in the treatment of INSLAW prior to and since the bankruptcy, and asking his intervention to repair the damage inflicted on the Company. (PX 268)

398. During the trial of this matter, the Court observed the witnesses very closely and reached certain definite and firm convictions based on the demeanor and expressions of those witnesses, as well as on an analysis of the inherent probability or improbability of their testimony in light of the documentary evidence and other known facts. Accordingly, the Court makes the following general findings with respect to such trial witnesses, although the comments expressed herein should not be interpreted as being fully inclusive:

(a) The testimony of William Hamilton was accurate in all or almost all respects, even taking into account the natural human tendency to emphasize those things favorable to one's own cause. Mr. Hamilton was an impressive witness with an exceptionally good memory and an extraordinary ability to remember with precision details of events that occurred years ago.

(b) The testimony of John Gizzarelli was accurate in all major respects. Although his recollection was not as good as Hamilton's recollection, it is impossible for the Court to conclude that Gizzarelli was inaccurate in his

detailed, and substantiated testimony describing Brewer's intense hatred of Hamilton. Gizzarelli is no longer an employee of INSLAW, and there was no reason for him to slant his testimony to one side or the other.

(c) The testimony of Elliot Richardson was very impressive. The Court found Richardson to be of high integrity and his testimony to be absolutely reliable.

(d) The testimony of James Rogers, Dean Merrill, Harvey Sherzer, Bellie Ling and Marian Holton was straightforward and consistent with the known facts.

(e) The Court was impressed with the credentials and expertise of Thomas Delutis, INSLAW's expert witness. The Court believes Delutis to have conducted himself with a tenable aura of impartiality and finds the Delutis testimony to be very believable.

(f) The testimony of Laurence McWhorter was totally unbelievable for a number of reasons. First, McWhorter could not remember anything other than a 30-second telephone call that he had with Hamilton before the contract was entered into. On cross-examination, it was brought out that McWhorter had testified at his deposition that he repeatedly could not recall virtually anything related to the contractual relationship between the parties, notwithstanding that he supposedly had supervisory responsibility over this relationship and over Brewer. Second, McWhorter's testimony was contradicted by Hamilton and also by his supervisor, William Tyson. Third, Brewer was a member of McWhorter's

wedding party and had advanced money to McWhorter in the form of buying into a real estate partnership with McWhorter.

(g) The testimony of James Kelley was not believable. His hatred of Hamilton oozed from every pore; it was tangible and palpable. The Court finds that Kelley was a very bitter man who was eager to find any loophole that might exist to evade his ethical responsibilities as a lawyer not to reveal the confidences of a former client. Kelley showed that he was eager to say anything to harm Hamilton as long as it would sound plausible. In addition, Kelley is heavily involved with a company at least partially in competition with INSLAW and he is a friend or acquaintance of Brewer.

(h) The testimony of Jack Rugh also was not believable. Rugh was a biased witness whose testimony was tainted by the negative effect Mr. Brewer and his lack of impartiality had upon Mr. Rugh. Mr. Rugh also was biased in view of his ambitions to carry on the PROMIS Project in-house. Moreover, his testimony is at odds with the written PROMIS contract in several important particulars. For example, § 3.2.4.3. of the contract provides that INSLAW was required to provide "error-free" software which Rugh mistakenly believed required INSLAW to fix any "bugs" in the software regardless of who reported such bugs. This is contrary to the contract and is totally inconsistent with the logic of competitive bidding. As Hamilton pointed out in his testimony, INSLAW would be at a significant disadvantage to another company attempting to get the PROMIS contract because the other company would have no

other customers making bug fix demands whereas INSLAW would have to be including in DOJ's software all bug fix demands made by its customers or third parties other than DOJ. In addition, Rugh "interpreted" the contract to continue in effect as to all 94 offices even after the 74 office word processing phase of the contract was cancelled. This construction is implausible, as was Rugh's denial of Brewer's bias which was evidenced again and again during the course of the contract. Finally, Rugh suffered from the collective amnesia that many of DOJ's witnesses were suffering from and this is further evidence of his unreliability.

(i) The testimony of William Tyson was not believable. His testimony that Brewer's attitude toward INSLAW was positive, constructive and favorable is so ludicrous in light of the evidence taken as a whole that it was difficult for this Court to believe any of Mr. Tyson's testimony. Tyson displayed an extraordinarily biase attitude toward serious allegations of personal bias by Brewer towards Hamilton and INSLAW, and did little, if anything, to discharge his responsibilities as Brewer's superior to investigate these allegations.

(j) The testimony of C. Madison Brewer was most unreliable, and entirely colored by his intense bias and prejudice against Hamilton and INSLAW.

(k) The testimony of Robert Whiteley and Vito DiPietro was generally truthful, although they tended to slant certain of their testimony in favor of their employer.

(1) The testimony of Peter Videnieks was substantially unreliable. Videnieks was under Brewer's domination and was thoroughly affected by Brewer's bias. In addition, Videnieks displayed an amazing lack of recollection of pertinent facts, especially in regard to the very detailed notes which he maintained in respect to this matter. It is obvious that Videnieks acted at the bidding of Brewer and that his attitude toward INSLAW was directly the consequence of Brewer's influence on him.

(m) The testimony of James Mennino was absolutely incredible. It was totally unsubstantiated and obviously biased. The Court infers from the evidence as a whole that Mennino sought to obtain a copy of PROMIS software from DOJ by offering to provide DOJ with false information that Mennino believed would injure INSLAW. Mennino failed to substantiate his charges against INSLAW at the time these charges were originally made, even though DOJ requested substantiation at that time. Moreover, Mennino failed to bring any substantiating information to trial, notwithstanding his testimony that such information was available.

(n) The testimony of Ugo Gagliardi, DOJ's expert witness, is entitled to little weight and should be thoroughly discounted for several reasons. First, Gagliardi was heavily influenced in his view of the case by a viciously inaccurate characterization of INSLAW's position in this case provided by Rugh. Second, Gagliardi assumed the role of an advocate for the government and there was not even a pretense of

impartiality in his testimony. Finally, Gagliardi reached speculative conclusions on the basis of inadequate factual premises.

(o) The testimony of Alan Gibson was basically believable, except as otherwise noted in these findings, although he is not an expert qualified to give an opinion concerning the adequacy of INSLAW's methodology for determining the source of funding for individual enhancements to the Premised software.

(p) The testimony of Janis Sposato is to be viewed with considerable skepticism. Given Sposato's position as a DOJ ethics officer, her casual treatment of repeated serious allegations of outrageous misconduct by Brewer can only be described, even charitably, as willful blindness to the obvious.

(q) The testimony of Geraldine Schacht and Joyce DeRoy was substantially believable, and the Court has no indication that they were biased or would have any reason to favor either party.

399. The acts of DOJ as described in the foregoing findings of fact were done in bad faith, vexatiously, in wanton disregard of the law and the facts, and for oppressive reasons -- to drive INSLAW out of business and to convert, by trickery, fraud and deceit, INSLAW's PROMIS software.

CONCLUSIONS OF LAW

JURISDICTION AND VENUE

1. This Court has jurisdiction over this adversary proceeding to remedy violations of the automatic stay of 11 U.S.C. § 362(a), as a core proceeding under 28 U.S.C. § 157(b). Budget Service Co. v. Better Homes of Virginia, Inc., 804 F.2d 289, 292 (4th Cir. 1986). This Court may also exercise jurisdiction over INSLAW's requests for declaratory and injunctive relief as core proceedings under 28 U.S.C. § 157(b)(2)(A) and (E).

2. This action for declaratory judgment and injunctive relief for violations of the automatic stay is "not 'at its essence' a contract action" and is properly before this Court. Megapulse, Inc. v. Lewis, 672 F.2d 959, 968 (D.C. Cir. 1982). See also Conax Florida Corp. v. United States, 824 F.2d 1124 (D.C. Cir. 1987); Ramirez de Arellano v. Weinberger, 745 F.2d 1500 (D.C. Cir. 1984). The Court thus has ruled on the government's Motion to Dismiss that the government's contention that this action is merely a contract claim is without merit. INSLAW is seeking to establish and protect its proprietary rights to software that was developed using private funds and that was not required to be delivered under the March 1982 contract. Although the government is here attempting to justify its actions under the terms of the contract, as in Megapulse, the government's reliance on the contract does not alter the nature of the relief requested by INSLAW.

3. As this Court has discussed at some length in its opinion on denial of the Government's motion to dismiss, 76 Bankr. 224, 228-237 (1987), the Government cannot rely on the doctrine of sovereign immunity. The use of the trigger-word "governmental unit" in § 362 itself indicates that the Government is equally subject to suit for violations of the automatic stay, pursuant to 11 U.S.C. § 106(c). See, e.g., Matter of McVey Trucking, Inc., 812 F.2d 311, 326 (7th Cir. 1987); Lee v. Schweiker, 739 F.2d 870 (3d Cir. 1984); In re Neavear, 674 F.2d 1201 (7th Cir. 1982); In re Davis, 20 B.R. 519 (Bankr. M.D.Ga. 1982).

4. Venue is proper in this forum pursuant to 28 U.S.C. § 1408.

I. INSLAW'S PROPRIETARY ENHANCEMENTS ARE ENTITLED TO PROTECTION AS TRADE SECRETS

5. "Old PROMIS," created by the Institute pursuant to LEAA funding prior to May 15, 1981, is admitted by both INSLAW and DOJ to be part of the public domain. When a work passes into the public domain, "anyone can copy, distribute or sell it for his own benefit." Burke v. NBC, 598 F.2d 688, 691 (1st Cir. 1979), cert. denied, 444 U.S. 880 (1980). Therefore, INSLAW, as anyone, has every right to market PROMIS and to prepare derivative works based upon the public domain software.

6. Aside from the physical media that may be used to store or represent software code (e.g., magnetic tape, floppy disk, printout of source code), software code constitutes intellectual property that may be protected under

trade secret laws. See, e.g., Restatement of Torts § 757; Uniform Trade Secrets Act § 1(4).

7. Computer programs may be protected and maintained as trade secrets. Dickerman Associates, Inc. v. Tiverton Bottled Gas Co., 594 F. Supp. 30 (D.Mass. 1984). Under the definition of "trade secret" accepted in this jurisdiction, "[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors, who do not know or use it." Ashland Oil, Inc. v. FTC, 409 F. Supp. 297, 303 (D.D.C.), aff'd 548 F.2d 977 (D.C. Cir. 1976), quoting 4 Restatement of Torts § 757 (1939). See also, Buckelshaus v. Monsanto Co., 467 U.S. 986, 1001, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984); Kewanee Oil Co. v. Micron Corp., 416 U.S. 470, 474-475, 94 S.Ct. 1879, 1883, 40 L.Ed.2d 315 (1974). Several factors, none individually dispositive, aid in the determination of whether information constitutes a trade secret:

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. 4 Restatement of Torts § 757, Comment b, p. 6 (1939).

Ashland Oil, supra, 409 F. Supp. at 303; (footnote omitted). Thus, the owner of a program "need only show that the particular architecture of its program is valuable, that it is not a matter of common knowledge or readily duplicated, and that it was developed and has been kept secret through Plaintiff's efforts." Dickerson Associates, supra, 594 F. Supp. at 35. Whether the PROMIS enhancements constitute a trade secret is a question of fact. See, e.g., Lear Siegler, Inc. v. Ark-Ell Springs, Inc., 569 F.2d 286 (5th Cir. 1978); Kodekey Electronics, Inc. v. Mechanex Corp., 486 F.2d 449 (10th Cir. 1973).

8. Even though INSLAW has licensed the software and provided the source code to its users, the restrictions on their use and disclosure by INSLAW's licensees entitles the enhancements to trade secret protection. "This necessary element of secrecy is not lost, however, if the holder of the trade secret reveals the trade secret to another 'in confidence, and under an implied obligation not to disclose it.' ... Often the recipient of confidential knowledge of the subject of a trade secret is a licensee of its holder." Kewanee Oil v. Bicron, supra, 416 U.S. at 475; (citations omitted). See also Management Science America, Inc. v. Cyborg Systems, Inc., 6 C.L.S.R. 921, 925 (N.D.Ill. 1978) (summary judgment for defendants denied where plaintiff's trade secret payroll system software programs were distributed under limited lease agreements); Data General Corp. v. Digital Computer Controls, Inc., 357 A.2d 105, 110-111 (Del. Ch. 1975) (trade

secret protection upheld where complete set of maintenance drawings showing computer design was disseminated with confidentiality restrictions).

9. As set forth fully in the preceding Findings of Fact, INSLAW is therefore entitled to claim the enhancements as its proprietary trade secrets. These trade secret protections accord INSLAW the right to exclude DOJ from copying, using, selling or otherwise disseminating the protected trade secret software.

II. DOJ UNLAWFULLY USED INSLAW'S PROPRIETARY TRADE SECRET ENHANCEMENTS IN VIOLATION OF THE AUTOMATIC STAY

10. None of these enhancements was to be delivered to the government under the Statement of Work in the competitive procurement solicitation and incorporated into the 1982 Executive Office contract between INSLAW and DOJ. INSLAW was to provide three services to DOJ, *i.e.*, time-sharing, input of existing data from the Docket and Reporting System, and retailoring of the installed PROMIS sites as often as once per year.

11. This Court rejects DOJ's contention that its unlawful use of INSLAW's privately funded enhancements should be sanctioned under Clause 74 of the Executive Office contract, which sets forth the policies and procedures promulgated by the Department of Defense ("DOD") in the Armed Services Procurement Regulations. In DOJ's view, if INSLAW used any software during the course of its performance of the contract, regardless of whether development of that software has been privately

financed and is otherwise owned by INSLAW, DOJ obtains unlimited rights thereto pursuant to Clause 74. The essential criterion of Clause 74, however, focuses not on whether that software was actually used, but rather, whether the software was required to be developed under the express terms of the contract. None of those privately funded enhancements shown by INSLAW to be proprietary meets that criterion.

12. Under subsection (b)(1)(i) of Clause 74, unlimited rights apply to "software resulting directly from performance of developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract." One of the few points the parties have always agreed upon is that the Executive Office contract required INSLAW (or any other company that might have won the competitive procurement) not to develop software, but to implement the already existing pilot project version of PROMIS, with the five BUS enhancements. (PPFF 151)

13. Clause 74(b)(1)(iii) provides for unlimited rights in "computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract." The Statement of Work clearly identifies what, if any, software was "required to be developed or originated." None of the more than one hundred discrete enhancements were "required" because they were not created in response to any request from DOJ. (PPFF 83) The 32-bit VAX version of PROMIS already existed before the contract began, was developed with private funds for internal

strategic marketing reasons, and would have been required to be provided to DOJ only in the event that DOJ chose to install VAX minicomputers in the U.S. Attorney's Offices, which it did not. (PPFF 33-39, 78-79) The Batch Update subsystem was developed for a private client prior to the execution of the Executive Office contract. (PPFF 72-76) Although INSLAW used Batch Update to perform an enumerated service under the contract, INSLAW was not required to do so; moreover, had DOJ not entered into Modification 12, INSLAW would instead have coded individual programs to perform the service rather than relinquish any rights in its generic proprietary software. (PPFF 73-76) The Data Base Adjustment subsystem also was created from scratch as an independent research and development project by INSLAW. (PPFF 68-69) Even though INSLAW may have used the Data Base Adjustment subsystem to perform services enumerated in the Statement of Work, the Statement of Work contains no requirement that any software be developed for that purpose. (PPFF 70) Rather, as Mr. Hamilton testified, the Data Base Adjustment subsystem, and indeed all of INSLAW's proprietary enhancements, were provided to the Government only because of, and pursuant to, the express limitations of Modification 12, and DOJ's obligation to negotiate in good faith over the terms for use of those enhancements by DOJ. (PPFF 70-71, 75-76, 80)

14. Similarly, subsection (b)(1)(v), which grants unlimited rights to "computer software required to be prepared under this or any other Government contract or subcontract and

constituting corrections or changes to Government-furnished data or computer software," gives to DOJ no right in INSLAW's numerous discrete enhancements. Those enhancements and changes were not requested by the Government and, therefore, were not required to be prepared under the Statement of Work. (PPFF 83)

15. Subsection (b)(1)(viii), which grants unlimited rights in software that is in the public domain or that is "normally furnished without restriction by the Contractor or subcontractor," is inapplicable, inasmuch as INSLAW has taken all reasonable steps to assure adequate trade secret protection for its enhancements through specific contractual limitations on their disclosure, dissemination and use by INSLAW's licensees.^{30/} (PPFF 43, 61)

16. In short, DOJ cannot assert that the contract itself required INSLAW to provide its enhancements to DOJ. Thus the central criterion under Clause 74 -- the requirement to develop the software pursuant to the Statement of Work -- is

^{30/} Although DOJ incorrectly asserts that INSLAW has introduced no evidence that the enhancements are copyrighted (cf. PPFF 43), INSLAW makes no claim relating to copyrights in this adversary proceeding. (INSLAW Complaint; INSLAW Post-Hearing Brief at 17, n.2) Notwithstanding, Clause 74(c)(1), grants DOJ a license to use only copyrighted computer software that was "prepared or required to be delivered under the contract," and DOJ obtained no rights thereby to any of INSLAW's privately-funded copyrighted software.

not satisfied with respect to INSLAW's proprietary enhancements.^{31/}

17. Moreover, the irreconcilable and conflicting testimony of Brewer, Kelley, and Videnieks, as well as the testimony of Hamilton, Merrill and Gizzarelli (all cited in PPFF 141) succinctly demonstrates that, contrary to DOJ's new post hoc reading of Clause 74, there was no mutual understanding in 1982 as to what data rights applied to the PROMIS software. Brewer testified to a "gentlemen's agreement" with INSLAW, whose terms differed sharply from the "understanding" testified to by Kelley. Videnieks denied any awareness of such an agreement and stated that he would have declared it invalid at any rate. INSLAW's understanding was clearly the same then as it is now, that DOJ obtained under the contract no rights whatsoever in any of the privately financed proprietary PROMIS enhancements.

18. Both parties agreed that this lack of any "meeting of the minds" concerning those rights was cured through Modification 12. For that reason, it is incredible

31/ DOJ's argument to the contrary was made for the first time during Mr. Rugh's "technical interpretation" of the Statement of Work at trial. (PPFF 151, 152, 248) If DOJ's new-found argument had any real merit, DOJ surely would have raised it timely when the issue first arose in the spring of 1983. Moreover, the argument that INSLAW was required to furnish its privately-financed software enhancements is inconsistent with the fact that DOJ awarded the PROMIS contract on the basis of a competitive procurement with other prospective bidders unable to offer privately-financed enhancements to the PROMIS software because such bidders would not have other PROMIS-related business.

that DOJ would seek to interpret Clause 74 in a vacuum and without reference to Modification 12.

19. A fortiori, any argument that DOJ obtained rights to any of the enhancements under Clause 74 is thoroughly eviscerated by DOJ's assent to the terms of Modification 12. Having notified DOJ of the existence of the enhancements months before the contract was signed, again in April through August 1982 and in February 1983, INSLAW hardly "slipped" these enhancements into the PROMIS software "secretly," in order "to defeat the government's rights." (DOJ Proposed Conclusions at 62) DOJ agreed explicitly to review the enhancements and to negotiate with INSLAW before the implementation of the first U.S. Attorney's Office PROMIS site as to which enhancements DOJ wanted to include in the Executive Office version of the software. (PPFF 228-232) At that time, had DOJ performed its obligations under Modification 12, INSLAW would have removed any or all of its enhancements at its own expense. DOJ instead foreclosed all of INSLAW's attempts to negotiate in good faith concerning the enhancements, and intentionally expanded its misappropriation of INSLAW's proprietary enhancements to 45 offices. DOJ's opportunity to have INSLAW remove the enhancements at INSLAW's expense before implementation expired long ago and is gone forever. It would have been a relatively simple matter for INSLAW to have removed any of the enhancements before the first version was delivered. Now, some four years and 44 additional versions later, it is far too late for DOJ to impose that requirement on INSLAW.

20. With respect to the 32-bit architecture VAX version of PROMIS (the "VAX port"), INSLAW was under no obligation whatsoever to deliver the time-sharing VAX version of the software to DOJ under the contract unless the government selected VAX minicomputers under the computer procurement for the twenty offices.

21. Concerning the Batch Update subsystem enhancement, paragraph 3.2.2.7 of the Statement of Work required that INSLAW provide the service of transferring information from the existing Docket and Reporting System database to the new minicomputer PROMIS database formats for each U.S. Attorney's Office. Although INSLAW used the Batch Update subsystem for that purpose, there was no requirement that INSLAW develop or use for that purpose a reusable, multi-function software subsystem. The testimony demonstrated that in the absence of Modification 12, INSLAW would have developed for the government a hard-coded "disposable" limited purpose program for transferring D&R data into particular PROMIS database formats specific to individual U.S. Attorney's Offices; and that the only reason that INSLAW provided Batch Update to the DOJ rather than "hard-coding" a limited purpose program was because of DOJ's agreement to review INSLAW's PROMIS enhancements pursuant to Modification 12. In light of the parties' understanding, evident even before the inception of the contract, and embodied in the Response to the Request for Proposal (which is incorporated into the contract by reference), that INSLAW would retain all rights to

privately-financed PROMIS enhancements, this is the only interpretation of the contract consistent with the provisions of the contract and the intentions of the parties at the time of its execution.

22. With respect to the Data Base Adjustment subsystem, pursuant to paragraph 3.2.4.1 of the Statement of Work, INSLAW was to perform the service of retailoring a number of the individual versions of PROMIS provided to the twenty largest United States Attorneys' Offices, as often as on an annual basis. Although INSLAW used its Data Base Adjustment enhancements for that purpose, the contract itself does not require INSLAW to develop or provide software for that purpose. The testimony demonstrates that in the absence of Modification 12, INSLAW would have developed for the government a hard-coded "disposable" limited purpose program for restructuring each individual database; and that the only reason that INSLAW provided the Data Base Adjustment subsystem to the DOJ rather than "hard-coding" numerous limited purpose programs was because of DOJ's agreement to review INSLAW's PROMIS enhancements pursuant to Modification 12. In light of the parties' understanding, evident even before the inception of the contract, and embodied in the Response to the Request for Proposal (which is incorporated into the contract by reference), that INSLAW would retain all rights to privately-financed PROMIS enhancements, this is the only interpretation of the contract consistent with the provisions

of the contract and the intentions of the parties at the time of its execution.

23. The discrete "maintenance" changes and enhancements were also not required to be delivered to the government under the Statement of Work in the Executive Office contract, paragraph 3.2.4.3. That paragraph requires only that INSLAW provide to the government maintenance corrections that resulted from reports and suggestions from the Executive Office or individual USAOs. Because the proprietary discrete changes and enhancements were not reported to INSLAW by the Executive Office, INSLAW was not required to provide those changes under the Executive Office contract.

24. These above-referenced provisions of the Executive Office contract and the Statement of Work are clear and unambiguous on their face. However, to the extent that DOJ contends the Statement of Work is ambiguous in specifying whether INSLAW's PROMIS enhancements were deliverable under the Executive Office contract, the basic rule of contra preferentem -- equally applicable to government contracts -- requires that the contract be interpreted most strongly against the drafter. See, e.g., Standard Oil Co. of California v. Hickel, 317 F. Supp. 1192 (D. Alaska 1970), aff'd 450 F.2d 493 (9th Cir. 1971). It is undisputed that the government alone drafted the Statement of Work, without input from or negotiation with INSLAW, and in advance of DOJ's competitive procurement that INSLAW ultimately won. Any ambiguities must therefore be resolved in INSLAW's favor, such that INSLAW's proprietary

enhancements were not deliverable to the DOJ under the Executive Office contract, but for Modification 12.

25. INSLAW has further demonstrated that its trade secret enhancements were created using private funds. Thus, the government obtained no rights to those privately funded enhancements under Clause 74 of the Executive Office contract.

26. DOJ contends that the government has contributed funds to the PROMIS maintenance pool and to overhead costs supporting INSLAW's research and development that, according to DOJ, defeat INSLAW's proprietary rights in the PROMIS enhancements. The Court does not agree with either of these contentions either as matters of fact or as issues of law.

27. Although two government agencies, DOJ Lands Division and OSHARC, contributed to a maintenance pool that funded general maintenance for all of INSLAW's maintenance customers, these two federal agencies, as all of INSLAW's maintenance customers, received INSLAW's PROMIS enhancements pursuant to express contractual agreements that acknowledge INSLAW's proprietary interests in the enhancements as the sole property of INSLAW, and agree not to disclose, disseminate, copy or use the enhancements without the express prior written permission of INSLAW. Thus, the government did not obtain through these maintenance agreements any rights to disclose or disseminate these changes and enhancements, even within the government.

28. Similarly, the facts presented at trial fail to demonstrate that the government has made any contributions to

INSLAW's overhead pool. Although overhead contributions to independent research and development are expressly permissible and allocable costs under government contracts (see, e.g., 41 C.F.R. § 1-15.107(g)(5) (1982)), in this instance the government refused to remunerate INSLAW for any overhead allocable to research and development. These costs were specifically questioned in government audits, and no allocable share of those costs has been paid by the government to date.

29. Even assuming that the government has contributed to development of INSLAW's enhancements through overhead payments, such contributions are of no legal consequence. Government contributions to overhead grant no rights in technical data, because "government funding" does not include independent research and development ("IR&D") costs whose funds came in part from Government reimbursement of overhead. "DOD policy for many years has regarded IR&D programs as 'private expense' for technical data rights purposes, even if partly reimbursed through overhead." Bell Helicopter Textron, 85-3 BCA ¶ 18415, 92,355, 92,405 (Armed Services Bd. Contract App. 1985). "[I]t appears to be long established DOD policy -- and the Government has not put the matter in issue here -- that IR&D costs which are reimbursed in part through indirect cost allocations to Government contracts nevertheless represent 'private expense' for purposes of the data rights clause." Id., at 92,423. "'At private expense' has been defined by the Department of Defense to mean entirely at private expense unless the item, component or process is developed with

independent research and development funds or with other indirect funds such as profits earned on Government contracts." R. Nash, J. Cibinic, 1 Federal Procurement Law at 736 (3rd ed. 1977); (emphasis added).

30. This policy of treating costs reimbursed by the Government through indirect cost allocations, including overhead payments, as the contractor's private expense appears to date back at least as far as January 29, 1965, in Defense Procurement Circular, Number 22. The Department of Defense therein criticized a draft General Accounting Office report that proposed acquisition of data rights by the Government in a contractor's IR&D where the Government had indirectly supported the contractor's IR&D through overhead. Summarizing the Government's position, the Circular states:

1. The Government does not -- and should not -- automatically acquire rights in technical data resulting from a contractor's independent research and development, even though the costs may be said to have been substantially paid for by the Government through the Government's purchase of the company's products or services.

2. In the interest of competition the Government may, and in many cases should, seek to negotiate with contractors for rights in the technical data resulting from independent R&D. . . . Such negotiation, however, must be real negotiation and not compulsion. The contractor should not be legally bound to give or sell its rights to the Government and should not be penalized for refusing to do so, as for example, by being subjected to disallowance of its R&D costs under contracts with the Government.
. . .

3. Whether or not a contractor is willing to transfer its privately developed data to the Government, it is in the Government's interest to continue to support the contractor's independent R&D by permitting a reasonable allowance for IR&D costs in the prices of the products and services bought by the Government. As in the case of any other customer and of the public at large, the benefit that the Government gains by paying prices that include a pro rata share of the seller's independent research and development costs is the assurance of a continued flow of new and better products oriented toward the customer's requirements.

Defense Procurement Circular Number 22, at 6.

31. This policy has recently been codified in regulations promulgated by DOD specifically relating to technical data rights in computer software. Effective May 1987, the Armed Services Procurement Regulations limit the government's rights in computer software developed in whole or in part at private expense, and offer greater proprietary protections to private software developers. See 52 Fed. Reg. 12,391 (April 16, 1987) (to be codified at 48 C.F.R. §227.4).

It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased.

48 C.F.R. § 227.481-1(c) (1987). Also, for the first time the regulations codify expressly DOD's long-standing definition of "private expense":

'Private expense', as used in this subpart, means that the cost of development has not been paid in whole or in part by the Government and that such development was not required as an element of performance under a Government contract or subcontract; provided, however, independent research and development and bid and proposal costs are deemed to be at private expense.

48 C.F.R. § 227.471 (1987); (emphasis added). See also 10 U.S.C. § 2320(a) (1986).

32. Although this policy was promulgated by the Department of Defense, this policy applies equally to the Executive Office contract between the Department of Justice and INSLAW. The 1982 Executive Office contract expressly incorporates the Rights in Technical Data provisions from the Armed Services Procurement Regulations -- the policies and procedures created by the Department of Defense. Moreover, as noted previously, 41 C.F.R. § 1-15.107 (1982) of the Federal Acquisition Regulations in effect prior to the execution of the Executive Office contract provides that parties ordinarily should attempt to reach advance understandings as to the treatment of IR&D costs, which presupposes that the DOD policy was recognized as applicable to all federal agency contracts. Finally, this policy is also reflected in recent revisions to the Federal Acquisition Regulations with respect to the Department of Justice. In 48 C.F.R. § 2827.402, adopted on July 22, 1985, the Department of Justice articulates as its policy the need to strike a balance between Government data requirements and the promotion of innovation by recognizing and

protecting the contractor's commercial and proprietary interests in software. Under these new regulations, where works are created even during the course of contractual performance and funded partially through government and private expense, DOJ's express policy is to negotiate with the contractor concerning the scope of rights to be accorded each party. Id.

33. These federal procurement policies, implemented first in the 1960's and still in force today, all lead to the conclusion that DOJ's assertions of contributions to overhead pools, even if proved, would not grant DOJ any rights in INSLAW's proprietary and privately funded enhancements.

34. The property comprising the estate of the debtor encompasses "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). As a threshold matter, trade secret rights in software created and owned by the debtor possess the essential attributes of property cognizable under 11 U.S.C. § 541. See, e.g., In re Bedford Computer Corp., 62 B.R. 555 (Bankr. D.N.H. 1986) (adversary proceeding brought by creditor to reclaim software property from debtor); In re Uniservices, Inc., 517 F.2d 492 (7th Cir. 1975) (trade secret passes as property right to the bankrupt estate).

35. The automatic stay provisions of the Bankruptcy Code prohibit "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate". 11 U.S.C. § 362(a)(3). The stay

Provisions are "applicable to all entities," including the United States, pursuant to 11 U.S.C. § 106(c). Therefore, INSLAW is entitled to automatic stay protection for its enhancements under the bankruptcy laws, and appropriate relief for violations of the automatic stay by DOJ.

36. Under 11 U.S.C. § 362(h), "[a]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees and, in appropriate circumstances, may recover punitive damages." By using the words "shall recover," Congress intended that the award of actual damages, costs and attorneys' fees is mandatory and not within the discretion of the Court. See, e.g., Rodriguez v. Compass Shipping Co., 451 U.S. 596, 602, 101 S.Ct. 1945, 68 L.Ed.2d 472 (1981) (use of "shall" in Longshoremen's and Harbor Workers' Compensation Act denotes mandatory operation).

37. A "willful violation" does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. In re Allen, 69 B.R. 461 (Bankr. E.D.Pa. 1987); In re Mewes, 58 B.R. 124 (Bankr. D.S.D. 1986); In re Tel-A-Communications Consultants, Inc., 50 B.R. 250 (Bankr. D.Conn. 1985). Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must

be awarded. In re AM International, Inc., 46 B.R. 566 (Bankr. M.D.Tenn. 1985).

38. Although section 362(h) mandates recovery of actual damages by "an individual," the statute has been held to apply equally to violations of the automatic stay that injure corporations. Budget Service Co. v. Better Homes of Virginia, Inc., 804 F.2d 289 (4th Cir. 1986); In re Tel-A-Communications Consultants, supra. As the Fourth Circuit noted, the broad remedial purposes of § 362(h) would be poorly served if corporations were denied relief:

We agree with the reasoning of the bankruptcy court in [In re Tel-A-Communications] that § 362(h) must be read in conjunction with the rest of § 362 and that its sanctions are not limited to the relief of an 'individual' in the literal sense. The Bankruptcy Code does not define the word 'individual'. We agree that it seems unlikely that Congress meant to give a remedy only to individual debtors against those who willfully violate the automatic stay provisions of the Code as opposed to debtors which are corporations or other like entities. Such a narrow construction of the term would defeat much of the purpose of the section, and we construe the word "individual" to include a corporate debtor.

Budget Service Co., 804 F.2d at 292.

39. In addition, this Court agrees with the statement in In re Stephen W. Grosse, P.C., 68 Bankr. 847, 851 (Bkrty. E.D.Pa. 1987), that "[p]rior to the addition of 11 U.S.C. § 362(h) to the Code in 1984, most courts concluded that debtors could seek compensatory damages by an adversary proceeding. . . ." Dashner v. Cate, 65 Bankr. 492, 495 (D.N.D.

Iowa 1986), holds that "former § 362 [prior to the addition of § 362(h)] does not provide a private cause of action outside the bankruptcy court for violations of the automatic stay" (emphasis added), citing Cort v. Ash, 422 U.S. 66 (1975). This Court believes and holds that, whatever may be the case "outside the bankruptcy court," a debtor does have a private cause of action in the bankruptcy court for violations of the automatic stay, and that private cause of action is enforceable not only by a contempt-of-court proceeding but also and alternatively at the debtor's option by an adversary proceeding. The Dashner v. Cate court acknowledges that the first and fourth factors of Cort v. Ash are met.^{32/} In this Court's view, the second and third factors are also present, at least with respect to an adversary proceeding in a bankruptcy court:

(1) There is implicit "indication of legislative intent . . . to create such a remedy" in the forceful statement, "[t]he automatic stay is one of the fundamental debtor protections provided by the bankruptcy law." (S. Rep. No. 95-989 (1978), pp. 54-55) The Dashner v. Cate court itself states that "[t]he legislative history does reveal that Congress intended to provide the Bankruptcy Court with the power to enforce the automatic stay." 65 Bankr. at 495.

^{32/} The plaintiff/debtor is "one of the class for whose special benefit the statute was enacted"; and "it would [not] be inappropriate to infer a cause of action based solely on federal law. . . ." 422 U.S. at 78.

(2) It is "consistent with the underlying purposes of the legislative scheme to imply such a remedy for plaintiff"/debtor in the bankruptcy court, and numerous cases have so held. A.H. Robins Co., Inc. v. Piccinini, 788 F.2d 994 (4th Cir. 1986) (preliminary injunction, ^{to enforce automatic stay} upheld in debtor's adversary proceeding against personal injury claimants), and cases cited therein. There is nothing in the legislative history or elsewhere to suggest that Congress intended to restrict debtors solely to the use of contempt-of-court proceedings in order to enforce their rights under § 362(a), and ⁱⁿ Robins, ^{the debt-} did not seek a contempt-of-court remedy. Thus, this Court concludes that, even apart from §362(h), this Debtor has an implied cause of action against DOJ in this Court as a core proceeding for DOJ's violation of the automatic stay imposed by §362(a).

40. In this case, the defendants were fully cognizant of INSLAW's claim of ownership regarding the PROMIS software and of the filing of INSLAW's bankruptcy petition. It is further undisputed that ~~that~~ the defendants' continued use and dissemination of that property following the bankruptcy, in the words of C. Madison Brewer, the defendants' PROMIS Project Manager, was done "willingly", intentionally, and with the willingness "to take the risk" of that conduct being found a violation of the law. The DOJ has continued over a long period of time to use INSLAW's trade secret enhancements despite the fact that they are property of the estate, while refusing to pay for them. These acts constitute the willful exercise of

control over the property of the estate, and thus violate the automatic stay under the Bankruptcy Code, 11 U.S.C. § 362(a)(3), the violation of which is actionable pursuant to the remedies provided under §362 generally and especially § 362(h).

41. The contract between INSLAW and the Department of Justice involved two separate and clearly distinguishable tasks. INSLAW was to implement Old PROMIS, as adapted during the pilot and BJS contracts, on minicomputers at twenty designated larger U.S. attorney's offices (with an option, admittedly never exercised, to expand this use to up to thirty offices). Second, INSLAW was to create, generate and implement a different kind of PROMIS software to be used on specified word processing equipment at some seventy-four smaller U.S. attorney's offices.

42. The software generated for the twenty larger computer-site offices, as specified in the contract, was to be used only at those offices, and the word-processing type of software to be developed and created by INSLAW was to be used only at the seventy-four smaller offices. In effect, it was as though there were two contracts calling for two types of software to be delivered to two types of offices -- a fact clearly understood by the DOJ.

43. When DOJ chose to terminate the word-processing part of the contract, all that was left under the contract was the creation of the software for use and implementation at the twenty larger offices. Thus, the DOJ had no right to continue

to use or disseminate the computer-type software beyond the twenty offices agreed upon by the parties for which this software was created.

44. Modification 12, as clearly explained by Mr. Videnieks in his March 18, 1983 letter offering this dispute mechanism to resolve the ownership rights issue, precluded the government, consistent with the parties' rights and terms otherwise under the contract, from disseminating or disclosing either of the two types of PROMIS software requested by him beyond the "94 U.S. attorneys offices covered by the subject contract until the data rights of the parties to the contract are resolved."

45. Fundamental to an analysis of the meaning of Modification 12 is the legal principle that "a contract is read as a harmonious whole which gives a reasonable, lawful and effective meaning to the whole; an interpretation that leaves portions of the instrument superfluous is disfavored." Armada, Incorporated, 84-3 BCA ¶ 17,694, 88,230, 88,239 (1984); (citations omitted). See also Martin Lane Co. v. United States, 432 F.2d 1013, 1019 (Ct. Cl. 1970). In other words, selected sections of a contract can only be interpreted correctly in the context of the entire document. Thus, in ascertaining the reasonable meaning of a contract, great weight is to be given to the purpose of the contract. Appeal of Mil-Pak Co., Inc., GSBGA 5850, 81-2 BCA 15637 (1981), citing Benjamin v. United States, 172 Ct.Cl. 118, 348 F.2d 502 (1965). Because the purpose of the Executive Office contract

by its own terms was to provide the minicomputer version of PROMIS to twenty offices, Modification 12 must be read in light of that express contract purpose.

46. To the extent that an interpretation of individual clauses or modifications conflicts with the meaning of the contract as a whole, such an interpretation must be rejected. For example, in Armada, the contractor attempted to interpret a contract modification by itself to contend that it was entitled to fees for work for which fees were not payable under the basic contract. The Board properly rejected the contractor's contentions, holding that the whole of the contract still manifested the parties' intention that fees be paid according to the original contract terms.

47. Thus, the non-dissemination and use provisions of Modification 12 must be read consistent with the existing contract, the terms of which Modification 12 unequivocally states were not otherwise changed. DOJ's agreement not to disseminate or use the software beyond the ninety-four offices had to be read within the context of the two contract tasks. The meaning of Modification 12, therefore, is that the minicomputer software would not be disseminated beyond the twenty designated larger offices for which this software was being created and developed, and the word-processing software would not be disseminated beyond the seventy-four offices for which that type of software was being created and developed. Any other interpretation would render meaningless the provision of the contract giving DOJ an option (which it never exercised)

to expand the minicomputer software to ten additional large offices by paying an additional fee.

48. The government has admitted that, following the bankruptcy, it already has begun to implement the minicomputer version of PROMIS in a total of forty-five United States Attorneys' Offices. The DOJ, therefore, has disseminated INSLAW's privately funded proprietary enhancements to minicomputer PROMIS to some twenty-five additional locations, or more than a 125% increase over the terms of the March 1982 contract. This action, in the absence of any agreement (and, indeed, any of the prescribed negotiations) concerning INSLAW's privately funded enhancements, constitutes an unlawful exercise of control by the DOJ over the property of the debtor, INSLAW, in violation of the automatic stay.

49. Thus, DOJ's continuing dissemination of INSLAW's proprietary enhancements to PROMIS violates the automatic stay and entitles INSLAW to injunctive relief and damages under 11 U.S.C. § 362, especially § 362(h).

III. DOJ'S FRAUD IN INDUCING INSLAW TO ENTER MODIFICATION 12, THE EFFECTS OF WHICH HAVE NOT BEEN CURED BY DOJ, CONSTITUTES A FURTHER VIOLATION OF THE AUTOMATIC STAY

50. Moreover, by virtue of having proposed Modification 12, the government entered into an absolute obligation to negotiate with INSLAW and to resolve the data rights issue. Indeed, as Mr. Videnieks categorically stated in urging the procedure embodied in Modification 12:

The parties to the contract must resolve the issues of 'proprietary enhancements' as soon as possible, but no later than the first PROMIS implementation on Government Furnished Equipment. [PX 70]

51. Mr. Videnieks, in his own words, stated the procedure that was to be followed regarding the use by DOJ of INSLAW's proprietary property to be as follows:

Following resolution of the data rights issue, the Government will review the effect of any enhancements which are determined to be proprietary, and then either direct INSLAW to delete those enhancements from the versions of PROMIS to be delivered under the contract or negotiate with INSLAW regarding the inclusion of those enhancements in that software. The Government would then either destroy or return the "enhanced" versions of PROMIS in exchange for the Government PROMIS software including only those enhancements that should be included in the software. [PX 70]

It is obvious that the government understood that it had an absolute obligation to resolve and to negotiate the data rights issue and thereafter to negotiate its use of the proprietary property of INSLAW, before it could use that property.

52. For this reason, DOJ's ostensible concern with the "commingling" of the public domain and enhanced PROMIS software, and DOJ's contention that INSLAW "chose" to include the enhancements in the Executive Office Prime version are without merit. DOJ knew the enhancements were "commingled" before proposing Modification 12, and indeed proposed Modification 12 specifically in order to "get" those "goods." DOJ agreed to decide which enhancements it wished to retain,

with the explicit understanding that INSLAW would remove any enhancements DOJ did not wish to license. It is undisputed that the independent subsystem enhancements may be removed without interfering with the operation of PROMIS, and that INSLAW's precise method of documenting software changes permit restoration of the code to an unenhanced version.

53. The Court further finds that because DOJ entered into Modification 12 without any intention to negotiate with INSLAW, as required under Modification 12, INSLAW has demonstrated by clear and convincing evidence that DOJ fraudulently induced INSLAW into agreeing to provide the proprietary enhancements to DOJ. "Where a party to a contract enters into the contract with a preconceived and undisclosed intention not to perform his obligations thereunder, he will be subject to an action for fraud." Robbins v. Ogden Corp., 490 F. Supp. 801, 809 (S.D.N.Y. 1980), citing Sabo v. Delman, 3 N.Y.2d 155, 164 N.Y.S.2d 714 (1957). A contract is voidable for fraudulent misrepresentation in the inducement where a party makes false assertions regarding essential terms of the contract, which reasonably induce assent by the other party who neither knew or had reason to know the true essential terms. Robbins v. Ogden, supra; Greene v. Gibraltar Mortgage Inv. Corp., 488 F. Supp. 177, 179 (D.D.C. 1980). See also, Restatement (Second) of Contracts §§ 164, 167.

54. DOJ's fraud, perpetrated to trick, to deceive and to induce INSLAW into providing enhanced PROMIS to DOJ, itself constitutes a violation of the automatic stay. Although DOJ

committed the initial deceit underlying Modification 12 prior to INSLAW's bankruptcy, to the extent that DOJ continued to exercise unlawful control over INSLAW's property, DOJ was required to cure its past conduct once the automatic stay came into effect. DOJ's continuing failure to negotiate in good faith with INSLAW regarding its need for and remuneration due for the enhancements pursuant to Modification 12 entitles INSLAW to damages under 11 U.S.C. § 362, especially § 362(h).

55. The automatic stay "is one of the fundamental protections provided by the bankruptcy laws." H.R. Rep. No. 95-595 at 340, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6296. Section 362(a)(6) proscribes "any act" to collect, to assess or to recover upon pre-petition claims made against the debtor.

Essential to any analysis of the meaning of and policy behind any section of the bankruptcy code is the recognition that a bankruptcy court is a court of equity. Bankruptcy courts do not read statutory words with a computer's ease, but operate on the overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction.

In re Briggs Transportation Co., 780 F.2d 1339, 1343 (8th Cir. 1985). Thus, the equitable powers of the Bankruptcy Courts under 11 U.S.C. § 362 generally and especially § 362(h) must be broad enough to remedy any acts that harass the debtor or continue those financial pressures that drove it into bankruptcy. H.R. Rep. No. 95-595, supra at 340.

56. Acts described in § 362(a) that are committed pre-petition may have consequences that continue into the post-petition period protected by the automatic stay. Post-petition consequences of such acts themselves constitute violations of the automatic stay, such that the automatic stay effectively imposes upon the creditor a duty to cure and to prevent the continuation of pre-petition conduct. Inactivity on the part of a creditor with notice is as offensive to the automatic stay provision as is activity. See, e.g., In re Holland, 21 B.R. 681 (Bankr. N.D.Ind. 1982). See also In re Elder, 12 B.R. 491 (Bankr. M.D.Ga. 1981).

IV. DOJ'S FAILURE TO CURE THE CONTINUING EFFECTS OF BIAS AGAINST INSLAW FURTHER VIOLATES THE AUTOMATIC STAY

57. Thus, the DOJ's failures to act to remedy past acts of bias, impartiality and harassment against INSLAW, also constitute actionable violations of the automatic stay provisions.

58. Clearly, the bias and lack of impartiality on the part of Mr. Brewer and others, which INSLAW repeatedly brought to the attention of the DOJ, are forbidden to government employees. The government-wide standard of conduct set forth at 5 C.F.R. § 735, and incorporated into the DOJ regulations at 28 C.F.R. § 45.735(1)(b), specifically provides:

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of: ...

(d) Losing complete independence or impartiality.

5 C.F.R. § 735.201(a) (1986). This same prohibition also is incorporated in the Federal Acquisition Regulations ("FAR"), which require that:

Government business shall be conducted with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest in Government contractor relationships.

48 C.F.R. § 3.101-1. "Impartiality" as used in these regulations is further defined in the FAR at § 503.101-3 by reference to the General Service Administration Standards of Conduct at 41 C.F.R. § 105-735.202(c):

Impartiality in conduct of official business. GSA personnel shall not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict may arise or appear to arise . . . by any action which could reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the government. Strict impartiality is often difficult to maintain when business relationships are allowed to become overly personal (Emphasis added).

These same standards -- avoiding even the appearance of a loss of complete independence or impartiality -- are echoed throughout the regulations governing the conduct of virtually every government agency. See, e.g., Standards of Conduct of the Department of Interior (43, C.F.R. § 20.735-6(b)(1)(i-vi)),

Department of Transportation (49 C.F.R. § 99.735-7(a)(1-6) (1986)), Department of Housing and Urban Development (24 C.F.R. § 40-735-210(a-f) (1986)), and Environment Protection Agency (40 C.F.R. § 3.103(d)(1-6) (1986)).

59. When such apparent bias or lack of impartiality exists, the course that must be followed is clear: either the employees must recuse themselves, or it is the duty of their superiors to recuse these employees. The Office of Government Ethics, which is charged with advising and enforcing the standards of government conduct, notes that the decision whether to recuse a government employee should ordinarily be left to the supervisory agency. See Office of Government Ethics Informed Advisory Opinion Nos. 86x19 (Dec. 15, 1986), 85x14 (Sept. 23, 1985), and 83x18 (Nov. 16, 1983). If the agency fails to take the necessary actions to remove an employee who has lost complete independence or impartiality, the courts can condemn the failure to recuse as an abuse of discretion. Center for Auto Safety v. F.T.C., 586 F. Supp. 1245 (D.D.C. 1984).

V. INSLAW IS ENTITLED TO PERMANENT INJUNCTIVE RELIEF

60. Pursuant to 11 U.S.C. § 105 and Bankruptcy Rule 7065, this Court is empowered to enjoin conduct in violation of the automatic stay. Injunctive relief seeks not only to eliminate the effect of past wrongdoing, but also to prevent its recurrence. United States v. W.T. Grant Co., 345 U.S. 629, 632-633, 73 S.Ct. 894, 97 L.Ed. 1303 (1953); Swift & Co. v.

United States, 276 U.S. 311, 326, 48 S.Ct. 311, 72 L.Ed. 587 (1928). The courts are given a wide range of discretion in framing the terms of injunctions to afford complete relief to the aggrieved party. United States v. Crescent Amusement Co., 323 U.S. 173, 185, 65 S.Ct. 254, 89 L.Ed. 160 (1944).

61. The Court finds that the facts of this case warrant the grant of injunctive relief to INSLAW.

62. INSLAW has demonstrated that it will suffer irreparable injury unless it receives immediate injunctive relief. Monetary remuneration for past damage and even future liability will not adequately compensate INSLAW for its injuries. INSLAW's enhancements to PROMIS are its lifeblood, the nucleus of its assets. To retain the ability to market these enhancements, INSLAW must be able to maintain control over its trade secrets, without fear of the trade secrets dissipating into the public domain. It is noteworthy in this regard that trade secrets receive different statutory treatment than other forms of intellectual property. Patents and registered copyrights, which are dedicated to the public, are subject to compulsory license by the government pursuant to 28 U.S.C. § 1498, which provide that damages are the exclusive remedies for infringement. No equivalent statutory provision exists for trade secrets, thus permitting suit for injunctive relief for trade secret violations.

63. Moreover, certainty over title and control over these trade-secret enhancements will significantly assist INSLAW's efforts to emerge successfully from Chapter 11

bankruptcy as a healthy and promising corporate entity. Injunctive relief will, therefore, assure both INSLAW and the public at large that INSLAW has the ability to provide the public with the enhanced version of PROMIS.

64. Further, only injunctive relief can assure INSLAW and its creditors that the government's biased conduct will be relegated to the past. Despite the termination of the Executive Office contract, a number of outstanding issues remain for resolution and continue to jeopardize INSLAW's chances for survival. Moreover, and more importantly, INSLAW still wishes again to be able to provide PROMIS users in the U.S. Attorneys' Offices with future updates and service that could significantly improve the existing USAO PROMIS operations. INSLAW has received inquiries from U.S. Attorneys' Offices that wish to receive the most up-to-date PROMIS enhancements from INSLAW. However, neither a fair resolution of past matters nor pursuit of new business opportunities is possible until and unless the consuming influence of bias can be enjoined.

65. The second factor, the balance of the harms, also strongly favors the issuance of the requested injunctive relief. The injunctive relief grants an adequate remedy for INSLAW without imposing undue hardship upon DOJ. Certain elements of the requested relief impose no burden whatsoever upon DOJ, but merely seek to enforce in this instance statutory and regulatory protections already in existence that heretofore improperly have been ignored by DOJ. Thus, the injunctive

sanctions requested by INSLAW are reasonable in light of the purposes of the bankruptcy laws and the exigencies of maintaining trade secret protections. Thus, there would be little or no detriment to the government. Because INSLAW's risk of the entire loss of its proprietary trade-secret enhancements to PROMIS is far greater than any risk to DOJ, the balance of harms strongly favors the grant of injunctive relief.

66. The public interest, the third factor to be considered, would best be served by enforcement of the automatic stay and prevention of future violations of the stay by the DOJ.

67. The public has a strong interest in promoting the purposes underlying the Bankruptcy Code, and in assuring INSLAW's emergence from Chapter 11 bankruptcy as a healthy, thriving corporation that is able to avail itself of future business opportunities, without limitation. This is especially true for INSLAW, which since its inception as the Institute has been dedicated to improving the efficiency of this nation's resources for law enforcement, prosecution and correction.

68. Further, this Court cannot ignore that in this case, the party violating the automatic stay is the Department of Justice. Public confidence in our legal system erodes when the very agencies entrusted with law enforcement fail to follow their mandate and are permitted to willfully disobey the law. The Department of Justice should be for this nation a paradigm of the legal foundation upon which this country stands. As noted by the Supreme Court in Berger v. United States, the

interest of the United States as a litigant "is not that it shall win a case, but that justice shall be done." 295 U.S. 78, 88 (1935). And in Owen v. City of Independence, 445 U.S. 622, 650 (1980): "How 'uniquely amiss' it would be . . . if the government itself -- 'the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct' -- were permitted to disavow liability for the injury it has begotten. . . ." As Justice Brandeis stated in the following passage from his dissent in Olmstead v. United States, 277 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928):

Decency, security, and liberty alike demand that government officials shall be subjected to the rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. (Emphasis added.)

The disregard shown by DOJ for the Bankruptcy Code and for the standards of conduct for government employees disserves the public trust, and, therefore, should be enjoined in order to foster the public interest.

VI. INSLAW IS FURTHER ENTITLED TO ITS COSTS AND ATTORNEYS' FEES

69. In addition, under 11 U.S.C. § 362(h), Congress mandated that violations of the automatic stay be compensated with awards of actual damages, including costs to the debtor. In this case, INSLAW has been required to devote extraordinary resources to the prosecution of these violations, including substantial hours of labor by INSLAW executives and staff. The Court, therefore, will award INSLAW its costs to date of prosecuting these violations in this adversary proceeding.

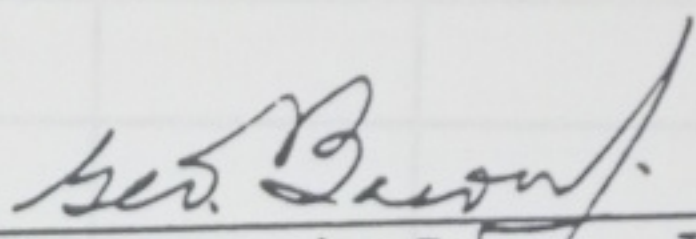
70. Finally, section 362(h) specifies as an element of mandatory damages the debtor's attorneys' fees and costs of prosecuting violations of the automatic stay. It is appropriate for DOJ to be required to pay at this time INSLAW's attorneys' fees and costs to date in this proceeding.

71. As a further alternative ground for the imposition of attorney's fees, this Court concludes on the basis of the foregoing findings of fact that the United States of America and DOJ acted in bad faith, vexatiously, wantonly, and for oppressive reasons. Accordingly, the United States of America and DOJ are liable for INSLAW's reasonable attorney's fees. 28 U.S.C. § 2412(b); see Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 258-59 (1975).

For all the reasons set forth in these Findings of Fact and Conclusions of Law, and for the reasons stated in the Court's bench ruling on September 28, 1987, this Court is today issuing its Final Judgment and Order granting INSLAW

declaratory and injunctive relief as well as attorneys' fees and costs, but (for reasons stated in that Order) deferring for later determination INSLAW's request for punitive damages.

Dated: January 25, 1988.


George Francis Bason, Jr.
United States Bankruptcy Judge.

NON CONFIDENTIAL
VERSION

~~IN CAMERA
UNDER SEAL
NOT PUBLIC~~

NON CONFIDENTIAL
VERSION

SIA CORP. TIME SHEET FOR THE MONTH OF December 1983.

Page ---

DATE	DAY	MaryAnn Huang	Si Go					TOTAL Hours
12/1	Thu	7	7					
12/2	Fri	7						
12/5	Mon	7	7					
12/6	Tue	7	7					
12/7	Wed	7						
12/8	Thu	7						
12/9	Fri	7	7					
12/12	Mon	7						
12/13	Tue	7						
12/14	Wed	7	7					
12/15	Thu	7	7					
12/16	Fri	7						
12/19	Mon	7	7					
12/20	Tue	7						
12/21	Wed	7	7					
12/22	Thu	7						
12/23	Fri	7	7					
12/26	Mon	HOLIDAY						
12/27	Tue	7						
12/28	Wed	7						
12/29	Thu	7	7					
12/30	Fri	7	7					
TOT. Hours								
TOTAL Days		21	11					

PLAINTIFFS EXHIBIT # 3

APPENDIX A (Page 2 of 2)

85-257

NUGAN HAND BANK

Australian Mystery

Fall of a Banking Firm Spotlights the Roles Of High U.S. Officials

Frank Nugan's Violent Death Opens Lid on Odd Traffic In Dope, Foreign Funds

Politicians Charge Cover-Up

By JONATHAN KWITNY

Staff Reporter of THE WALL STREET JOURNAL

SYDNEY, Australia—At 4 a.m. Sunday, Jan. 27, 1980, a police sergeant and a constable, according to their testimony, were patrolling a lonely stretch of highway 90 miles from here when they spotted the parking lights of a Mercedes on an old road off in the woods. Inside the car, slumped across the front seat in a puddle of blood, was the body of a 37-year-old man with a new rifle in his hands.

They searched his pockets and found the business card of William Colby, the former

This is the first of a series of articles.

U.S. director of central intelligence. On the back of the card was the itinerary of a trip Mr. Colby planned to make to Asia in the next month. The two policemen also found a Bible with a meat-pie wrapper interleaved at page 252; on the wrapper were scribbled the names of Mr. Colby and U.S. Rep. Bob Wilson of California, then the ranking Republican on the House Armed Services Committee.

All this might sound like the beginning of a Hollywood spy movie, but the studios would have to assign their most imaginative scriptwriters to produce a tale as startling as the real-life events that have followed that grisly discovery more than two years ago. The body was quickly identified as that of Frank Nugan, the chairman of a group of companies affiliated with the private Australian banking concern of Nugan Hand Ltd. Since then, investigations have pieced together a picture of an amazing swindle that spanned six continents and bilked investors out of millions of dollars.

A Political Issue

More perplexing yet, evidence has turned up that Nugan Hand bank was deeply involved in moving funds about the world for big international heroin dealers and also might have been involved in the shady world of international arms traffic. To cap it off, the offices of Nugan Hand and its affiliates were loaded with former high-ranking U.S. military and intelligence officials (see story on Page 26).

This has convinced many Australians that the company was involved in secret work for the U.S. government. Despite official denials from Washington, the issue has refused to die and has become one of the central debating points in Australian politics.

The issue of U.S. investment may be hard to resolve because many of the essential records were destroyed. Within hours after the discovery of Frank Nugan's body, telephones began ringing urgently all over the world. One was on the desk in Manila of three-star U.S. Gen. LeRoy J. Manor, the recently retired chief of staff for all U.S. forces in Asia and the Pacific. After his retirement, Gen. Manor had been on secret duty for the Air Force and at the time of Mr. Nugan's death he was helping run Nugan Hand's Philippine office.

According to Nugan Hand's public-relations man, Tony Zorilla, Gen. Manor called him and told him to stop the wire services from reporting Mr. Nugan's death. Mr. Zorilla says he replied that this would be unethical and impossible, and he refused. (Gen. Manor would describe his activities with Nugan Hand only in general terms, and he wouldn't discuss this incident.)

Ransacking the Files

Halfway around the world, Rear Adm. Earl P. "Buddy" Yates, the recently retired chief of staff for strategic planning for U.S. forces in Asia and the Pacific, heard the news and immediately jetted to Sydney. Nugan Hand's main office, Adm. Yates was the president of Nugan Hand, though he lived in Virginia Beach, Va. En route to Sydney, he met Nugan Hand's vice chairman, Michael Hand, a highly decorated Green Beret during the Vietnam War and a former U.S. intelligence operative, coming from London. They raced to the Nugan Hand office and with a few other insiders began ransacking the files.

According to witnesses, enough records to fill a small room were fed to a shredder. Others were packed in cartons, with everyone helping, and carried at night to the back room of a butcher shop owned by Robert W. Gehring, a former Army sergeant in Vietnam. Mr. Gehring worked for Maurice Bernard Houghton, a mysterious Texan who has owned several bar-restaurants in Sydney and who had played an active role in Nugan Hand's affairs since its inception in 1973.

Mr. Houghton not only joined the rape of the files, but also brought his lawyer, Michael Moloney, to direct it. According to the testimony of Stephen K. A. Hill, a Nugan Hand director who joined the record-ripping that week, Mr. Moloney urged the group on by warning, "I am fully aware of what has been going on. You all face jail terms of up to 16 years."

According to Mr. Hill's testimony, the burly Mr. Hand then broke in to say that if Mr. Moloney's orders to sanitize the files before the law arrived weren't followed, "terrible things" would happen—"Your wives will be cut up and returned to you in bits and pieces."

Mr. Moloney in a recent interview said, "Sure, I advised Hand to take documents out of the office. I was told there were serious deficiencies in the accounts. Everything I did I talked about with Yates first." (Adm.

Please Turn to Page 26, Column 1

PR/SL/WH-01

Continued From First Page

refuses to discuss any part of his activities with Nugan Hand.)
A few months later, on April 11, 1980, Nugan Hand went into liquidation. And the secrets that were so frantically being destroyed after Frank Nugan's death began to be reconstructed. Exposed to view, like maggots, were dozens of affiliated corporations, with little or no real assets, that Nugan Hand had set up to help its clients avoid taxes and move money overseas secretly and often illegally. Mr. Nugan had boasted that \$1 billion a year passed through these companies.

Still unanswered is the question of why so many high-ranking U.S. military and intelligence officials were working for the company. The CIA has denied involvement, and the State Department says that Nugan Hand wasn't in any way a U.S. government operation. But liquidators of the company and various Australian law-enforcement officers express anger and bewilderment that the CIA, the FBI and the U.S. Customs Service, all of which have information on Nugan Hand, have refused to release it to help in the current criminal and civil investigations.

"It has obvious overtones that somebody is covering something up," says the court-appointed Australian liquidator, John W. O'Brien.

From its base in Sydney, Nugan Hand had opened at least 22 offices around the world, including four in the U.S. After the company failed, anguished messages poured in from individuals who had invested money at above-market interest rates in securities sold by Nugan Hand and who now stood to lose everything. Liquidators say the official shortfall could reach \$50 million. The victims include many Americans, not only on the U.S. mainland but also at construction sites in Saudi Arabia and at military bases and legations throughout the Far East, Hawaii and the Philippines.

Nugan Hand carried out its operations with intense secrecy. Cables and interoffice messages were in code and often were marked "Destroy After Perusal." Company employees and customers were referred to by coded serial numbers rather than by name, and even references to foreign currencies were disguised: "Oats" stood for Swiss francs, "grains" for U.S. dollars and so forth down to "berries" for Portuguese escudos.

An Impossible Job

This, plus the obvious phoniness of many of the transactions carried on between companies within the Nugan Hand galaxy, makes the job of settling claims by creditors almost impossible. "We wouldn't be able to pay 1% on outstanding claims, says a liquidator. Many creditors aren't even bothering to file claims, apparently fearful that to do so would expose them to prosecution for ille-

gal deals carried out with the aid of Nugan Hand.

Currently, liquidators in Sydney, Hong Kong and the Cayman Islands are investigating the company, and often working at cross purposes, seeking to recover assets. Criminal investigations are being conducted by the New South Wales attorney general's office and by a joint task force of the New South Wales police and the Commonwealth police. The Royal Commission on Drugs ran into Nugan Hand so much that it has recommended a separate Royal Commission be appointed just for Nugan Hand.

In June 1980, Mr. Hand, disguised and using a phony passport, flew to the U.S., apparently via Fiji and Vancouver. He hasn't been seen since.

Leaving Australia about the same time as Mr. Hand was his closest friend and adviser, Bernie Houghton. Mr. Houghton has a broad acquaintanceship with many high-ranking U.S. officials. As a civilian, he daringly traded goods all over the Southeast Asian war zone in the 1960s. Though his restaurant is in a sleazy district of Sydney that swarms with prostitutes and sex shows, he has frequently welcomed congressmen, CIA officials and military brass there. A few weeks before Mr. Nugan died, Mr. Houghton played host, at a luncheon and later a dinner, to five members of the House Armed Services Committee who were in Australia to inspect defense and intelligence-gathering facilities. He arranged for Rep. Wilson and another congressman and their wives to dine with Mr. Hand. Last year, Mr. Houghton returned to Australia. Authorities have questioned him at length, but he avoids reporters.

Exhuming a Body

With the scandal refusing to die down in Australia, reports began to circulate that the body in Frank Nugan's grave wasn't his and that he was still alive and hiding out in the U.S. Once he was reported having been seen in a bar in Atlanta. Finally, in February 1981, officials ordered the body exhumed. With gruesome diligence, Australian TV covered the event by interviewing practically everyone in the area. ("Some are dry, some are wet," one gravedigger told interviewers, complaining that Mr. Nugan was "wet" and therefore "very messy.") A dentist definitely identified the remains as those of Mr. Nugan.

Stymied by the lack of progress in the investigation of the company's affairs, the *National Times*, an Australian newspaper, petitioned the FBI under the U.S. Freedom of Information Act for information it had on Nugan Hand. The newspaper was told that of some 151 pages of material in FBI files, it could see 71. But when the papers arrived, they resembled a collection of Rorschach tests, with page after page blacked out in heavy ink and bearing the notation "B-1," indicating that disclosure would endanger

Memorandum

TO: [REDACTED] b1

FROM: [REDACTED] b1

SUBJECT: [REDACTED] b1

1. [REDACTED] b1

2. [REDACTED] b1

3. [REDACTED] b1

4. [REDACTED] b1

5. [REDACTED] b1

6. [REDACTED] b1

7. [REDACTED] b1

8. [REDACTED] b1

9. [REDACTED] b1

10. [REDACTED] b1

11. [REDACTED] b1

12. [REDACTED] b1

13. [REDACTED] b1

14. [REDACTED] b1

15. [REDACTED] b1

16. [REDACTED] b1

17. [REDACTED] b1

18. [REDACTED] b1

19. [REDACTED] b1

20. [REDACTED] b1

21. [REDACTED] b1

22. [REDACTED] b1

23. [REDACTED] b1

24. [REDACTED] b1

25. [REDACTED] b1

26. [REDACTED] b1

27. [REDACTED] b1

28. [REDACTED] b1

29. [REDACTED] b1

30. [REDACTED] b1

31. [REDACTED] b1

32. [REDACTED] b1

33. [REDACTED] b1

34. [REDACTED] b1

35. [REDACTED] b1

36. [REDACTED] b1

37. [REDACTED] b1

38. [REDACTED] b1

39. [REDACTED] b1

40. [REDACTED] b1

41. [REDACTED] b1

42. [REDACTED] b1

43. [REDACTED] b1

44. [REDACTED] b1

45. [REDACTED] b1

46. [REDACTED] b1

47. [REDACTED] b1

48. [REDACTED] b1

49. [REDACTED] b1

50. [REDACTED] b1

51. [REDACTED] b1

52. [REDACTED] b1

53. [REDACTED] b1

54. [REDACTED] b1

55. [REDACTED] b1

56. [REDACTED] b1

57. [REDACTED] b1

58. [REDACTED] b1

59. [REDACTED] b1

60. [REDACTED] b1

61. [REDACTED] b1

62. [REDACTED] b1

63. [REDACTED] b1

64. [REDACTED] b1

65. [REDACTED] b1

66. [REDACTED] b1

67. [REDACTED] b1

68. [REDACTED] b1

69. [REDACTED] b1

70. [REDACTED] b1

71. [REDACTED] b1

72. [REDACTED] b1

73. [REDACTED] b1

74. [REDACTED] b1

75. [REDACTED] b1

76. [REDACTED] b1

77. [REDACTED] b1

78. [REDACTED] b1

79. [REDACTED] b1

80. [REDACTED] b1

81. [REDACTED] b1

82. [REDACTED] b1

83. [REDACTED] b1

84. [REDACTED] b1

85. [REDACTED] b1

86. [REDACTED] b1

87. [REDACTED] b1

88. [REDACTED] b1

89. [REDACTED] b1

90. [REDACTED] b1

91. [REDACTED] b1

92. [REDACTED] b1

93. [REDACTED] b1

94. [REDACTED] b1

95. [REDACTED] b1

96. [REDACTED] b1

97. [REDACTED] b1

98. [REDACTED] b1

99. [REDACTED] b1

100. [REDACTED] b1

U.S. "national defense or foreign policy." What was left was a few pages of more or less routine information, such as a copy of a Nugan Hand subsidiary's petition for incorporation in Hawaii.

In response to more-official Australian demands, the State Department sent a two-man FBI delegation to Sydney in April, 1982. But the two men stonewalled, telling law-enforcement officials that the FBI had already given its information to an appropriate Australian agency; they wouldn't say which agency or re-release the material. Australian state and national police investigating Nugan Hand say that they have never received the information. The only other likely recipient would appear to be the Australian Security Intelligence Organization (ASIO), a secret counterespionage group that long has worked closely with the CIA.

By law, ASIO can give information only to Prime Minister Malcolm Fraser or his attorney general. Mr. Fraser says the U.S. has assured him that it had no connections with Nugan Hand, and he has rejected opposition-party demands for a top-level probe. But the continuing parliamentary debate could rekindle the once-hot political controversy over vital CIA bases here. These bases monitor U.S. satellites watching the U.S.S.R. and China and direct the U.S.'s nuclear submarines.

The opposition Labor Party—which now leads Mr. Fraser's Liberal Party in some polls—has openly questioned whether the CIA, through ASIO, helped topple Australia's last Labor government, led by Prime Minister Gough Whitlam. The CIA has denied this. Now suspicions have been raised that Nugan Hand, which handled enormous amounts of money, may have been used to channel funds to favored Australian political candidates.

When Vice President George Bush visited Australia this April, Labor Party leader Bill Hayden—a strong possibility to become prime minister—used his 30-minute meeting with Mr. Bush mostly to press for the release of details on the Nugan Hand and Whitlam affairs. Mr. Bush only gave his assurances that the CIA wasn't involved in either matter. Mr. Bush was the CIA director in 1976, succeeding Mr. Colby, who later was to become a lawyer for Nugan Hand.

Continued From First Page

refuses to discuss any part of his activities with Nugan Hand.)

A few months later, on April 11, 1980, Nugan Hand went into liquidation. And the secrets that were so frantically being destroyed after Frank Nugan's death began to be reconstructed. Exposed to view, like maggots, were dozens of affiliated corporations, with little or no real assets, that Nugan Hand had set up to help its clients avoid taxes and move money overseas secretly and often illegally. Mr. Nugan had boasted that \$1 billion a year passed through these companies.

Still unanswered is the question of why so many high-ranking U.S. military and intelligence officials were working for the company. The CIA has denied involvement, and the State Department says that Nugan Hand wasn't in any way a U.S. government operation. But liquidators of the company and various Australian law-enforcement officers express anger and bewilderment that the CIA, the FBI and the U.S. Customs Service, all of which have information on Nugan Hand, have refused to release it to help in the current criminal and civil investigations.

"It has obvious overtones that somebody is covering something up," says the court-appointed Australian liquidator, John W. O'Brien.

From its base in Sydney, Nugan Hand had opened at least 22 offices around the world, including four in the U.S. After the company failed, anguished messages poured in from individuals who had invested money at above-market interest rates in securities sold by Nugan Hand and who now stood to lose everything. Liquidators say the official shortfall could reach \$50 million. The victims include many Americans, not only on the U.S. mainland but also at construction sites in Saudi Arabia and at military bases and legations throughout the Far East, Hawaii and the Philippines.

Nugan Hand carried out its operations with intense secrecy. Cables and interoffice messages were in code and often were marked "Destroy After Perusal." Company employees and customers were referred to by coded serial numbers rather than by name, and even references to foreign currencies were disguised: "Oats" stood for Swiss francs, "grains" for U.S. dollars and so forth down to "berries" for Portuguese escudos.

An Impossible Job

This, plus the obvious phoniness of many of the transactions carried on between companies within the Nugan Hand galaxy, makes the job of settling claims by creditors almost impossible. "We wouldn't be able to pay 1% on outstanding claims, says a liquidator. Many creditors aren't even bothering to file claims, apparently fearful that to do so would expose them to prosecution for ille-

gal deals carried out with the aid of Nugan Hand.

Currently, liquidators in Sydney, Hong Kong and the Cayman Islands are investigating the company, and often working at cross purposes, seeking to recover assets. Criminal investigations are being conducted by the New South Wales attorney general's office and by a joint task force of the New South Wales police and the Commonwealth police. The Royal Commission on Drugs ran into Nugan Hand so much that it has recommended a separate Royal Commission be appointed just for Nugan Hand.

In June 1980, Mr. Hand, disguised and using a phony passport, flew to the U.S., apparently via Fiji and Vancouver. He hasn't been seen since.

Leaving Australia about the same time as Mr. Hand was his closest friend and adviser, Bernie Houghton. Mr. Houghton has a broad acquaintanceship with many high-ranking U.S. officials. As a civilian, he daringly traded goods all over the Southeast Asian war zone in the 1960s. Though his restaurant is in a sleazy district of Sydney that swarms with prostitutes and sex shows, he has frequently welcomed congressmen, CIA officials and military brass there. A few weeks before Mr. Nugan died, Mr. Houghton played host, at a luncheon and later a dinner, to five members of the House Armed Services Committee who were in Australia to inspect defense and intelligence-gathering facilities. He arranged for Rep. Wilson and another congressman and their wives to dine with Mr. Hand. Last year, Mr. Houghton returned to Australia. Authorities have questioned him at length, but he avoids reporters.

Exhuming a Body

With the scandal refusing to die down in Australia, reports began to circulate that the body in Frank Nugan's grave wasn't his and that he was still alive and hiding out in the U.S. Once he was reported having been seen in a bar in Atlanta. Finally, in February 1981, officials ordered the body exhumed. With gruesome diligence, Australian TV covered the event by interviewing practically everyone in the area. ("Some are dry, some are wet," one gravedigger told interviewers, complaining that Mr. Nugan was "wet" and therefore "very messy.") A dentist definitely identified the remains as those of Mr. Nugan.

Stymied by the lack of progress in the investigation of the company's affairs, the National Times, an Australian newspaper, petitioned the FBI under the U.S. Freedom of Information Act for information it had on Nugan Hand. The newspaper was told that of some 151 pages of material in FBI files, it could see 71. But when the papers arrived, they resembled a collection of Rorschach tests, with page after page blacked out in heavy ink and bearing the notation "B-1," indicating that disclosure would endanger

Memorandum

TO: [REDACTED] b1

FROM: [REDACTED] b1

SUBJECT: [REDACTED] b1

1. [REDACTED] b1

2. [REDACTED] b1

3. [REDACTED] b1

4. [REDACTED] b1

5. [REDACTED] b1

6. [REDACTED] b1

7. [REDACTED] b1

8. [REDACTED] b1

9. [REDACTED] b1

10. [REDACTED] b1

11. [REDACTED] b1

12. [REDACTED] b1

13. [REDACTED] b1

14. [REDACTED] b1

15. [REDACTED] b1

16. [REDACTED] b1

17. [REDACTED] b1

18. [REDACTED] b1

19. [REDACTED] b1

20. [REDACTED] b1

21. [REDACTED] b1

22. [REDACTED] b1

23. [REDACTED] b1

24. [REDACTED] b1

25. [REDACTED] b1

26. [REDACTED] b1

27. [REDACTED] b1

28. [REDACTED] b1

29. [REDACTED] b1

30. [REDACTED] b1

31. [REDACTED] b1

32. [REDACTED] b1

33. [REDACTED] b1

34. [REDACTED] b1

35. [REDACTED] b1

36. [REDACTED] b1

37. [REDACTED] b1

38. [REDACTED] b1

39. [REDACTED] b1

40. [REDACTED] b1

41. [REDACTED] b1

42. [REDACTED] b1

43. [REDACTED] b1

44. [REDACTED] b1

45. [REDACTED] b1

46. [REDACTED] b1

47. [REDACTED] b1

48. [REDACTED] b1

49. [REDACTED] b1

50. [REDACTED] b1

51. [REDACTED] b1

52. [REDACTED] b1

53. [REDACTED] b1

54. [REDACTED] b1

55. [REDACTED] b1

56. [REDACTED] b1

57. [REDACTED] b1

58. [REDACTED] b1

59. [REDACTED] b1

60. [REDACTED] b1

61. [REDACTED] b1

62. [REDACTED] b1

63. [REDACTED] b1

64. [REDACTED] b1

65. [REDACTED] b1

66. [REDACTED] b1

67. [REDACTED] b1

68. [REDACTED] b1

69. [REDACTED] b1

70. [REDACTED] b1

71. [REDACTED] b1

72. [REDACTED] b1

73. [REDACTED] b1

74. [REDACTED] b1

75. [REDACTED] b1

76. [REDACTED] b1

77. [REDACTED] b1

78. [REDACTED] b1

79. [REDACTED] b1

80. [REDACTED] b1

81. [REDACTED] b1

82. [REDACTED] b1

83. [REDACTED] b1

84. [REDACTED] b1

85. [REDACTED] b1

86. [REDACTED] b1

87. [REDACTED] b1

88. [REDACTED] b1

89. [REDACTED] b1

90. [REDACTED] b1

91. [REDACTED] b1

92. [REDACTED] b1

93. [REDACTED] b1

94. [REDACTED] b1

95. [REDACTED] b1

96. [REDACTED] b1

97. [REDACTED] b1

98. [REDACTED] b1

99. [REDACTED] b1

100. [REDACTED] b1

101. [REDACTED] b1

102. [REDACTED] b1

103. [REDACTED] b1

104. [REDACTED] b1

105. [REDACTED] b1

106. [REDACTED] b1

107. [REDACTED] b1

108. [REDACTED] b1

109. [REDACTED] b1

110. [REDACTED] b1

111. [REDACTED] b1

112. [REDACTED] b1

113. [REDACTED] b1

114. [REDACTED] b1

115. [REDACTED] b1

116. [REDACTED] b1

117. [REDACTED] b1

118. [REDACTED] b1

119. [REDACTED] b1

120. [REDACTED] b1

121. [REDACTED] b1

122. [REDACTED] b1

123. [REDACTED] b1

124. [REDACTED] b1

125. [REDACTED] b1

126. [REDACTED] b1

127. [REDACTED] b1

128. [REDACTED] b1

129. [REDACTED] b1

130. [REDACTED] b1

131. [REDACTED] b1

132. [REDACTED] b1

133. [REDACTED] b1

134. [REDACTED] b1

135. [REDACTED] b1

136. [REDACTED] b1

137. [REDACTED] b1

138. [REDACTED] b1

139. [REDACTED] b1

140. [REDACTED] b1

141. [REDACTED] b1

142. [REDACTED] b1

143. [REDACTED] b1

144. [REDACTED] b1

145. [REDACTED] b1

146. [REDACTED] b1

147. [REDACTED] b1

148. [REDACTED] b1

149. [REDACTED] b1

150. [REDACTED] b1

151. [REDACTED] b1

152. [REDACTED] b1

153. [REDACTED] b1

154. [REDACTED] b1

155. [REDACTED] b1

156. [REDACTED] b1

157. [REDACTED] b1

158. [REDACTED] b1

159. [REDACTED] b1

160. [REDACTED] b1

161. [REDACTED] b1

162. [REDACTED] b1

163. [REDACTED] b1

164. [REDACTED] b1

165. [REDACTED] b1

166. [REDACTED] b1

167. [REDACTED] b1

168. [REDACTED] b1

169. [REDACTED] b1

170. [REDACTED] b1

171. [REDACTED] b1

172. [REDACTED] b1

173. [REDACTED] b1

174. [REDACTED] b1

175. [REDACTED] b1

176. [REDACTED] b1

177. [REDACTED] b1

178. [REDACTED] b1

179. [REDACTED] b1

180. [REDACTED] b1

181. [REDACTED] b1

182. [REDACTED] b1

183. [REDACTED] b1

184. [REDACTED] b1

185. [REDACTED] b1

186. [REDACTED] b1

187. [REDACTED] b1

188. [REDACTED] b1

189. [REDACTED] b1

190. [REDACTED] b1

191. [REDACTED] b1

192. [REDACTED] b1

193. [REDACTED] b1

194. [REDACTED] b1

195. [REDACTED] b1

196. [REDACTED] b1

197. [REDACTED] b1

198. [REDACTED] b1

199. [REDACTED] b1

200. [REDACTED] b1

201. [REDACTED] b1

202. [REDACTED] b1

203. [REDACTED] b1

204. [REDACTED] b1

205. [REDACTED] b1

206. [REDACTED] b1

207. [REDACTED] b1

208. [REDACTED] b1

209. [REDACTED] b1

210. [REDACTED] b1

211. [REDACTED] b1

212. [REDACTED] b1

213. [REDACTED] b1

214. [REDACTED] b1

215. [REDACTED] b1

216. [REDACTED] b1

217. [REDACTED] b1

218. [REDACTED] b1

219. [REDACTED] b1

220. [REDACTED] b1

221. [REDACTED] b1

222. [REDACTED] b1

223. [REDACTED] b1

224. [REDACTED] b1

225. [REDACTED] b1

226. [REDACTED] b1

227. [REDACTED] b1

228. [REDACTED] b1

229. [REDACTED] b1

230. [REDACTED] b1

231. [REDACTED] b1

232. [REDACTED] b1

233. [REDACTED] b1

234. [REDACTED] b1

235. [REDACTED] b1

236. [REDACTED] b1

237. [REDACTED] b1

238. [REDACTED] b1

239. [REDACTED] b1

240. [REDACTED] b1

241. [REDACTED] b1

242. [REDACTED] b1

243. [REDACTED] b1

244. [REDACTED] b1

245. [REDACTED] b1

246. [REDACTED] b1

247. [REDACTED] b1

248. [REDACTED] b1

249. [REDACTED] b1

250. [REDACTED] b1

251. [REDACTED] b1

252. [REDACTED] b1

253. [REDACTED] b1

254. [REDACTED] b1

255. [REDACTED] b1

256. [REDACTED] b1

257. [REDACTED] b1

258. [REDACTED] b1

259. [REDACTED] b1

260. [REDACTED] b1

261. [REDACTED] b1

262. [REDACTED] b1

263. [REDACTED] b1

264. [REDACTED] b1

265. [REDACTED] b1

266. [REDACTED] b1

267. [REDACTED] b1

268. [REDACTED] b1

269. [REDACTED] b1

270. [REDACTED] b1

271. [REDACTED] b1

272. [REDACTED] b1

273. [REDACTED] b1

274. [REDACTED] b1

275. [REDACTED] b1

276. [REDACTED] b1

277. [REDACTED] b1

278. [REDACTED] b1

279. [REDACTED] b1

280. [REDACTED] b1

281. [REDACTED] b1

282. [REDACTED] b1

283. [REDACTED] b1

284. [REDACTED] b1

285. [REDACTED] b1

286. [REDACTED] b1

287. [REDACTED] b1

288. [REDACTED] b1

289. [REDACTED] b1

290. [REDACTED] b1

291. [REDACTED] b1

292. [REDACTED] b1

293. [REDACTED] b1

294. [REDACTED] b1

295. [REDACTED] b1

296. [REDACTED] b1

297. [REDACTED] b1

298. [REDACTED] b1

299. [REDACTED] b1

300. [REDACTED] b1

301. [REDACTED] b1

302. [REDACTED] b1

303. [REDACTED] b1

304. [REDACTED] b1

305. [REDACTED] b1

306. [REDACTED] b1

307. [REDACTED] b1

308. [REDACTED] b1

309. [REDACTED] b1

310. [REDACTED] b1

311. [REDACTED] b1

312. [REDACTED] b1

313. [REDACTED] b1

314. [REDACTED] b1

315. [REDACTED] b1

316. [REDACTED] b1

317. [REDACTED] b1

318. [REDACTED] b1

319. [REDACTED] b1

320. [REDACTED] b1

321. [REDACTED] b1

322. [REDACTED] b1

323. [REDACTED] b1

324. [REDACTED] b1

325. [REDACTED] b1

326. [REDACTED] b1

327. [REDACTED] b1

328. [REDACTED] b1

329. [REDACTED] b1

330. [REDACTED] b1

331. [REDACTED] b1

332. [REDACTED] b1

333. [REDACTED] b1

334. [REDACTED] b1

335. [REDACTED] b1

336. [REDACTED] b1

337. [REDACTED] b1

338. [REDACTED] b1

339. [REDACTED] b1

340. [REDACTED] b1

341. [REDACTED] b1

342. [REDACTED] b1

343. [REDACTED] b1

344. [REDACTED] b1

345. [REDACTED] b1

346. [REDACTED] b1

347. [REDACTED] b1

348. [REDACTED] b1

349. [REDACTED] b1

350. [REDACTED] b1

351. [REDACTED] b1

352. [REDACTED] b1

353. [REDACTED] b1

354. [REDACTED] b1

355. [REDACTED] b1

356. [REDACTED] b1

357. [REDACTED] b1

358. [REDACTED] b1

359. [REDACTED] b1

360. [REDACTED] b1

361. [REDACTED] b1

362. [REDACTED] b1

363. [REDACTED] b1

364. [REDACTED] b1

365. [REDACTED] b1

366. [REDACTED] b1

367. [REDACTED] b1

368. [REDACTED] b1

369. [REDACTED] b1

370. [REDACTED] b1

371. [REDACTED] b1

372. [REDACTED] b1

373. [REDACTED] b1

374. [REDACTED] b1

375. [REDACTED] b1

376. [REDACTED] b1

377. [REDACTED] b1

378. [REDACTED] b1

379. [REDACTED] b1

380. [REDACTED] b1

381. [REDACTED] b1

382. [REDACTED] b1

383. [REDACTED] b1

384. [REDACTED] b1

385. [REDACTED] b1

386. [REDACTED] b1

387. [REDACTED] b1

388. [REDACTED] b1

389. [REDACTED] b1

390. [REDACTED] b1

391. [REDACTED] b1

392. [REDACTED] b1

393. [REDACTED] b1

394. [REDACTED] b1

395. [REDACTED] b1

396. [REDACTED] b1

397. [REDACTED] b1

398. [REDACTED] b1

399. [REDACTED] b1

400. [REDACTED] b1

401. [REDACTED] b1

402. [REDACTED] b1

403. [REDACTED] b1

404. [REDACTED] b1

405. [REDACTED] b1

406. [REDACTED] b1

407. [REDACTED] b1

408. [REDACTED] b1

409. [REDACTED] b1

410. [REDACTED] b1

411. [REDACTED] b1

412. [REDACTED] b1

413. [REDACTED] b1

414. [REDACTED] b1

415. [REDACTED] b1

416. [REDACTED] b1

417. [REDACTED] b1

418. [REDACTED] b1

419. [REDACTED] b1

420. [REDACTED] b1

421. [REDACTED] b1

422. [REDACTED] b1

423. [REDACTED] b1

424. [REDACTED] b1

425. [REDACTED] b1

426. [REDACTED] b1

427. [REDACTED] b1

428. [REDACTED] b1

429. [REDACTED] b1

430. [REDACTED] b1

431. [REDACTED] b1

432. [REDACTED] b1

433. [REDACTED] b1

434. [REDACTED] b1

435. [REDACTED] b1

436. [REDACTED] b1

437. [REDACTED] b1

438. [REDACTED] b1

439. [REDACTED] b1

440. [REDACTED] b1

441. [REDACTED] b1

442. [REDACTED] b1

443. [REDACTED] b1

444. [REDACTED] b1

445. [REDACTED] b1

446. [REDACTED] b1

447. [REDACTED] b1

448. [REDACTED] b1

449. [REDACTED] b1

450. [REDACTED] b1

451. [REDACTED] b1

452. [REDACTED] b1

453. [REDACTED] b1

454. [REDACTED] b1

455. [REDACTED] b1

456. [REDACTED] b1

457. [REDACTED] b1

458. [REDACTED] b1

459. [REDACTED] b1

460. [REDACTED] b1

461. [REDACTED] b1

462. [REDACTED] b1

463. [REDACTED] b1

464. [REDACTED] b1

465. [REDACTED] b1

466. [REDACTED] b1

467. [REDACTED] b1

468. [REDACTED] b1

469. [REDACTED] b1

470. [REDACTED] b1

471. [REDACTED] b1

472. [REDACTED] b1

473. [REDACTED] b1

474. [REDACTED] b1

475. [REDACTED] b1

476. [REDACTED] b1

477. [REDACTED] b1

478. [REDACTED] b1

479. [REDACTED] b1

480. [REDACTED] b1

481. [REDACTED] b1

482. [REDACTED] b1

483. [REDACTED] b1

484. [REDACTED] b1

485. [REDACTED] b1

486. [REDACTED] b1

487. [REDACTED] b1

488. [REDACTED] b1

489. [REDACTED] b1

490. [REDACTED] b1

491. [REDACTED] b1

492. [REDACTED] b1

493. [REDACTED] b1

494. [REDACTED] b1

495. [REDACTED] b1

496. [REDACTED] b1

497. [REDACTED] b1

498. [REDACTED] b1

499. [REDACTED] b1

500. [REDACTED] b1

501. [REDACTED] b1

502. [REDACTED] b1

503. [REDACTED] b1

504. [REDACTED] b1

505. [REDACTED] b1

506. [REDACTED] b1

507. [REDACTED] b1

508. [REDACTED] b1

509. [REDACTED] b1

510. [REDACTED] b1

511. [REDACTED] b1

512. [REDACTED] b1

513. [REDACTED] b1

514. [REDACTED] b1

515. [REDACTED] b1

516. [REDACTED] b1

517. [REDACTED] b1

518. [REDACTED] b1

519. [REDACTED] b1

520. [REDACTED] b1

521. [REDACTED] b1

522. [REDACTED] b1

523. [REDACTED] b1

524. [REDACTED] b1

525. [REDACTED] b1

526. [REDACTED] b1

527. [REDACTED] b1

528. [REDACTED] b1

529. [REDACTED] b1

530. [REDACTED] b1

531. [REDACTED] b1

532. [REDACTED] b1

533. [REDACTED] b1

534. [REDACTED] b1

535. [REDACTED] b1

536. [REDACTED] b1

537. [REDACTED] b1

538. [REDACTED] b1

539. [REDACTED] b1

540. [REDACTED] b1

541. [REDACTED] b1

542. [REDACTED] b1

543. [REDACTED] b1

544. [REDACTED] b1

545. [REDACTED] b1

546. [REDACTED] b1

547. [REDACTED] b1

548. [REDACTED] b1

549. [REDACTED] b1

550. [REDACTED] b1

551. [REDACTED] b1

552. [REDACTED] b1

553. [REDACTED] b1

554. [REDACTED] b1

555. [REDACTED] b1

556. [REDACTED] b1

557. [REDACTED] b1

558. [REDACTED] b1

559. [REDACTED] b1

560. [REDACTED] b1

561. [REDACTED] b1

562. [REDACTED] b1

563. [REDACTED] b1

564. [REDACTED] b1

565. [REDACTED] b1

566. [REDACTED] b1

567. [REDACTED] b1

568. [REDACTED] b1

569. [REDACTED] b1

570. [REDACTED] b1

571. [REDACTED] b1

572. [REDACTED] b1

573. [REDACTED] b1

574. [REDACTED] b1

575. [REDACTED] b1

576. [REDACTED] b1

577. [REDACTED] b1

578. [REDACTED] b1

579. [REDACTED] b1

580. [REDACTED] b1

581. [REDACTED] b1

582. [REDACTED] b1

583. [REDACTED] b1

584. [REDACTED] b1

585. [REDACTED] b1

586. [REDACTED] b1

587. [REDACTED] b1

588. [REDACTED] b1

589. [REDACTED] b1

590. [REDACTED] b1

591. [REDACTED] b1

592. [REDACTED] b1

593. [REDACTED] b1

594. [REDACTED] b1

595. [REDACTED] b1

596. [REDACTED] b1

597. [REDACTED] b1

598. [REDACTED] b1

599. [REDACTED] b1

600. [REDACTED] b1

601. [REDACTED] b1

602. [REDACTED] b1

603. [REDACTED] b1

604. [REDACTED] b1

605. [REDACTED] b1

606. [REDACTED] b1

607. [REDACTED] b1

608. [REDACTED] b1

609. [REDACTED] b1

610. [REDACTED] b1

611. [REDACTED] b1

612. [REDACTED] b1

613. [REDACTED] b1

614. [REDACTED] b1

615. [REDACTED] b1

616. [REDACTED] b1

617. [REDACTED] b1

618. [REDACTED] b1

619. [REDACTED] b1

620. [REDACTED] b1

621. [REDACTED] b1

622. [REDACTED] b1

623. [REDACTED] b1

624. [REDACTED] b1

625. [REDACTED] b1

626. [REDACTED] b1

627. [REDACTED] b1

628. [REDACTED] b1

629. [REDACTED] b1

630. [REDACTED] b1

631. [REDACTED] b1

632. [REDACTED] b1

633. [REDACTED] b1

Admirals, Generals, Ex-CIA Men Took Prominent Roles in Nugan Hand Bank

By a WALL STREET JOURNAL Staff Reporter
SYDNEY, Australia—Enough top-rank U.S. military and intelligence officers worked for Nugan Hand to run a small-sized war. The list includes:

ADM. EARL "BUDDY" YATES, a 1943 graduate of the U.S. Naval Academy, Legion of Honor winner in Vietnam, and commander of the aircraft carrier USS John F. Kennedy. Then he was the chief of staff for plans and policy of the U.S. Pacific Command, in charge of all strategic planning from California to the Persian Gulf, until his retirement in July 1974. He became the president of Nugan Hand bank early in 1977, recruited by Maurice Bernard Houghton, who apparently is an old friend.

GEN. LEROY J. MANOR, the chief of staff for the entire Pacific Command until he retired in July 1978 to undertake new duties that the Air Force says are so secret that it can't talk about them. These duties are generally known to have included negotiating the 1979 agreement with the Philippine government for continuance of the U.S. military bases there (which Gen. Manor used to command) and investigating the failed hostage rescue raid in Iran in 1980 (an assignment that apparently stemmed from his having designed and commanded the 1970 raid on a North Vietnamese prison camp that failed to find any U.S. prisoners). A much-decorated Air Force three-star general, he also had been the special assistant to the joint Chiefs of Staff at the Pentagon for "counterintelligence and special activities." He joined Nugan Hand's Manila office, allegedly to run it (which he denies), in 1979.

GEN. EDWIN F. BLACK, a 1940 graduate of West Point. He entered the Office of Strategic Services (OSS), which later became the CIA, and was the OSS commander in Berlin. He was the chief administrative aide to and frequent chess opponent of Allen Dulles, who became the head of the CIA. He was the wartime boss and then tennis partner of Richard Helms, who also became the head of the CIA. He was on the National Security Council staff under President Eisenhower and later the commander of all U.S. troops in Thailand during the Vietnam war, before becoming assistant Army chief of staff for the Pacific. He retired in 1970 to become executive vice president of the Freedoms Foundation in Valley Forge, Pa., a group promoting conservative politics. He also worked for LTV Corp., an important CIA contractor. In 1977, he became the president of Nugan Hand Inc., Hawaii, and special representative of the overall organization, making frequent trips to Asia. He says he was recruited by Adm. Yates and another admiral.

GEN. ERLIE COCKE JR., whose entry in Who's Who in America says that during World War II he was "prisoner of war three times, actually 'executed' by a German firing squad and delivered the coup de grace but survived 1945." He held various posts with the Defense Department and as an executive with Delta and then Peruvian airlines. He is a former national commander of the American Legion, honorary commander of the Nationalist Chinese Air Force and holder of the French Legion of Honor and top medals from Spain, the Philippines and Italy. Now listed as a retired general with the U.S. National Guard and a consultant. His consulting of-

fice served as Nugan Hand's Washington office.

WILLIAM COLBY, the U.S. director of central intelligence, 1973-76. He ran intelligence programs in Vietnam during the war. In 1979 and 1980, as a lawyer with the Wall Street firm of Reid & Priest, he worked for Nugan Hand on a variety of matters—tax problems; the Foreign Corrupt Practices Act; an abortive project to relocate Indochinese refugees on an island in either the Caribbean or the Pacific; an attempt to take over a Florida bank; the operations of Nugan Hand's mysterious Panama branch, and the problems surrounding Mr. Nugan's death. Mr. Colby submitted \$46,000 in bills, which weren't paid. A \$10,000 check for his retainer was issued but never cashed.

WALTER McDONALD, a career CIA officer since 1975 and deputy director in charge of economic research from 1972 to 77. Then, while still in the CIA, he helped his former boss, onetime CIA Director James Schlesinger, set up and run the U.S. Energy Department. He served on the National Foreign Intelligence Board, the senior advisory group in the intelligence community. He announced his retirement in 1979, went into consulting and almost immediately by his own account began spending most of his time with Nugan Hand, traveling in the U.S. and Europe with Mr. Nugan and talking with him daily.

GUY PAUKER, a Rand Corp. staff member who has advised the CIA and other government agencies since the 1950s, although he denies reports that he is a career employee of the CIA. Mr. McDonald, whom he calls his "good friend," once said that Mr. Pauker has long had frequent personal access to White House national security advisers, including Henry Kissinger and Zbigniew Brzezinski. Mr. Pauker went to work as a consultant to Nugan Hand after Adm. Yates introduced him to Messrs. Nugan and Hand. He, in turn, introduced them to Mr. McDonald. Mr. Pauker says he wasn't involved in any completed deals for the bank.

DALE HOLMGREN, a former U.S. Army officer in Taiwan who became manager of flight services for Civil Air Transport, a CIA-run airline in the Far East. He then went into business in Taiwan. He opened the Nugan Hand branch in Taipei in 1978 as a one-man representative. Adm. Yates once said that Mr. Holmgren had long worked with the U.S. military in Taiwan to develop "within the social structure of the Chinese in Taipei a close relationship with the U.S. military forces and the business and government community." Adm. Yates also said that Mr. Holmgren had worked for Nugan Hand without pay at least for a while because he had an independent income.

ROBERT "RED" JANSEN, a former CIA station chief in Bangkok who advised Thai governments through almost daily meetings with the prime minister in the early 1970s, according to persons close to them. He worked for Nugan Hand there in 1978, although he apparently severed his relationship that year (according to a colleague, because he was warned by the U.S. embassy that his presence at the bank had aroused suspicion). Mr. Jansen apparently has an unlisted number and couldn't be reached for comment.

suspicious of a government cover-up and be heightened by a disclosure by Australian liquidator O'Brien. He says that he has learned from the government-run telephone company that Frank Nugan's phone conversations were secretly recorded the last two years of his life on a device installed at the phone company, apparently by a government agency. Mr. O'Brien says phone-company officials have told him that the tapes—which might solve the mystery of who was behind Nugan Hand—are not at the company anymore.

Wiretap authority is tightly restricted in Australia, being allowed only in cases involving national security or narcotics investigations, according to the Commonwealth attorney general's office. State and national police have reported that they don't know anything about a wiretap on Mr. Nugan. Again, this points the finger at ASIO.

Australian immigration records show that a senior ASIO official, Leo Carter, vouched for Nugan Hand's ubiquitous Mr. Houghton when he entered Australia in February 1972 with an expired visa. On ASIO's word, Mr. Houghton received a visa allowing him to come and go from Australia at will. Mr. Carter has died, and ASIO won't comment on this.

Presumably the most sensitive of Nugan Hand's records were shredded right after Mr. Nugan died. But the remaining records hold many suggestions that the company may have been much more than a banking venture.

Notes on Troop Movements

The records contain long, periodically filed reports about military and political activities, mostly in Kampuchea (Cambodia), but also in Laos, Vietnam and Thailand. There is no concrete evidence that Nugan Hand was an active participant in U.S. covert operations. However, these detailed reports of troop movements appear unconnected to any banking or business activity. They were prepared by Nugan Hand's Bangkok representative, John Owen, a former career British navy officer, and bear notations that they were to be shown to Mr. Hand.

The files also show that Nugan Hand worked on big international arms deals, though it isn't clear what, if anything, was shipped.

For example, there were proposed transactions in 1979 for a partnership with Prince Panya Souvanna Phouma, the son of the former Laotian leader Souvanna Phouma. In one letter, Prince Panya took three pages to list available weapons, including missiles, light and heavy armor, tanks, combat helicopters and F-104 fighter planes and naval patrol planes. Nugan Hand memos indicate that the weapons were intended for delivery to Indonesia and Thailand. They also discuss creation of a private, freight-oriented airline in Southeast Asia (to be called "Sky of Siam") and other deals with Prince Panya.

Memos show that in 1975 Mr. Hand was arranging the sale to Rhodesia of recoilless rifles, mortars, grenade launchers and machine guns, and was negotiating for shipments of Rhodesian ivory.

Mr. Houghton has acknowledged in testimony that in 1979 he met in Switzerland with Edwin Wilson, the former CIA officer who is

now in U.S. custody, who is charged with selling explosives in Libya and who is alleged to have supplied trained men, arms and technology to Libya and other military buyers. A former Nugan Hand representative in Thailand, Neil Evans, has testified that Mr. Wilson went to Bangkok to discuss arms deals with Mr. Hand. Other Nugan Hand officials, however, deny Mr. Evans's story.

There seems no denying, however, that Nugan Hand was heavily involved with drug dealers. Murray Stewart Riley, a former Sydney policeman now serving time in Australia for attempting to import a boatload of marijuana from Thailand, was a regular customer of the firm. So were Riley's associates, who deposited drug money in Sydney and withdrew it in Asia.

Riley's business was brought to the bank, according to extensive testimony, by Harry Wainwright, a former San Francisco criminal lawyer who fled to Australia in 1973 after being indicted in the U.S. for income-tax evasion.

Testifying from prison two years ago for an Australian Royal Commission looking into drug trafficking, Riley said his heroin and marijuana imports were intended for the U.S. market. In the words of the commission, he said "that he had been informed that Nugan Hand offered a facility to transfer funds from Hong Kong to the United States."

Over \$1 Million of Drugs

Investigators say that they have traced about \$250,000 that Riley moved to Asia via Nugan Hand and that they believe the final figure will exceed \$1 million. They say they believe that much of the heroin was transshipped to the U.S. in containers that were repaired by a dockside welding firm in Australia that was closely tied to the dope dealers. They believe that another heroin ring tied to Nugan Hand used a similar system.

Apart from their connection with the bank, Michael Hand and Frank Nugan had been viewed suspiciously by narcotics agents for some time. As early as 1973, the Australian Narcotics Bureau began a file on Mr. Hand based on reports that he and K.L. "Bud" King, a former pilot for Air America airline had been flying dope in from Asia to an Australian airstrip. Air America was a Vietnam war-era airline, with close connections with the CIA. U.S. drug-enforcement officials now acknowledge that the airline also occasionally ran heroin out of Southeast Asia's famed "Golden Triangle" poppy-growing area.

The landing strip involved in the 1973 Australian Narcotics Bureau report was on a real-estate development promoted by American singer Pat Boone and financed by millionaire shipping magnate D.K. Ludwig. Mr. Hand had worked as a salesman for the project for several years after he came to Australia in 1967 and later asserted that he had made a fortune from his land sales.

The report of the illegal drug flights came from a lawyer representing Mr. King's housekeeper. Mr. King, who also worked for the Boone-Ludwig project, has since died in a fall. The report was released recently among many files turned over to the Australian parliament by three former narcotics officers who contend that the narcotics bureau covered up information on Nugan Hand drug dealings.

Meeting an Opium Overlord

Other released files include information on alleged Nugan Hand drug deals supplied by Andrew Lowe, formerly Sydney's biggest heroin dealer (by his own assessment), who recently completed a prison sentence for his dope deals. Mr. Lowe has testified that he arranged a meeting between Mr. Hand and Khun Sa, the Golden Triangle's biggest opium overlord, though there is no way to verify that.

Through meticulous police work, however, Australian officials have documented in a still unreleased report a series of transactions tying Nugan Hand not only to drug dealing but also possibly to a series of contract murders in which the so-called Mr. Asia heroin syndicate eliminated at least three persons who were informing Australian police about drug activities. Authorities say the "Mr. Asia" group's heroin circulated in the U.S. and elsewhere and brought at least \$100 million cash to the syndicate's operators.

According to testimony from dope ring and bank insiders, corroborated by telephone logs and other evidence, the syndicate was linked to the bank through a two-man Sydney law firm that represented both Mr. Nugan and various members of the heroin syndicate. The firm's senior partner, John Aston, used Nugan Hand for personal financial dealings and helped bring in other clients. And the law office was used as a drop-off point for bank clients who wished to remain secret: they left parcels of cash or other items at the law office for pick-up by bank representatives.

One parcel that bank director George Shaw, a major operational figure at Nugan Hand, says he picked up at the law office March 26, 1979, contained \$285,000 in small bills. This money has been traced through a laundering process involving a soft-drink firm that Nugan Hand had acquired (apparently because it dealt in big quantities of cash) and through accounts at different banks in Hong Kong, New York, Boston and Singapore.

Eventually the \$285,000 was paid out in checks from Nugan Hand's Singapore office, to a man identified by British police as the Singapore leader of the heroin syndicate. The payout was personally arranged by Mr. Hand in Singapore as instructed in a coded telex from Mr. Nugan in Sydney. This complicated money movement was a standard procedure Nugan Hand used for clients wishing to evade Australia's strict currency control laws, designed to keep capital at home.

Australian Mystery

VOL. CVH NO. 39

Australian Mystery

U.S. Servicemen Are Big Losers in Failure Of Nugan Hand Bank

Laborers at Mideast Projects Also Suffer; an Iranian Is Down to 'Last Pennies' A General's Smart Friends

By JONATHAN KWITNY

Staff Reporter of THE WALL STREET JOURNAL

SYDNEY, Australia—The close relationship of so many former high-ranking U.S. military and intelligence officials with Nugan Hand Ltd., a private Australian bank, has aroused deep suspicions among some Australians that the company was in some way an instrument of the U.S. government.

Undoubtedly, the prestige of these men was a powerful help in getting business for

This is the second of a series of articles.

the bank. Retired Adm. Earl "Buddy" Yates, the former chief of staff for plans and policy of the U.S. Pacific Command, became the president of Nugan Hand in 1977. Occupying the bank's Manila office was former three-star Gen. Leroy J. Manor, the former chief of staff for the entire Pacific Command. Former Gen. Edwin F. Black was the president of Nugan Hand Inc., Hawaii. Former Gen. Erle Cocke Jr., the former national commander of the American Legion, handled Washington, D.C., matters for the firm, and William Colby, the former director of the CIA, performed legal work for it.

Nugan Hand went into liquidation in April 1980. Earlier, on Jan. 27, Frank Nugan, the Australian co-founder of the firm, was found shot to death in his car, apparently a suicide. Later, in June, the other principal, Bronx-born Michael Hand, a former Green Beret and covert U.S. agent, fled from Australia in disguise and hasn't been seen since. Continuing investigations have proved that the bank and some of its business customers were engaged in illegal activities from tax fraud to moving drug money.

Aggressive Salesmen

The U.S. State Department has issued a denial that the government was in any way involved in the operations of Nugan Hand. But this does little to ease the pain of hundreds of individual investors who had put their savings into various ventures sponsored by the bank. Over the previous three years, aggressive salesmen had taken deposits all over the world, promising yields well above prevailing interest rates. Since the bank's failure, claims for more than \$20 million have come into a court-appointed liquidator's office in Hong Kong. This doesn't include claims to another liquidator, based in Australia. All told, the official shortfall could come close to \$50 million.

On the very day in January that Mr. Nugan was shot, Col. H. Kirby Smith, the chief judge of the U.S. Air Force Seventh Judiciary Circuit at Clark Air Force Base in the Philippines, handed \$20,000 to Gen. Manor. Nugan Hand's man in Manila. He received Nugan Hand certificate of deposit No. 11531, promising 15.125% interest. Col. Smith's claim says that he didn't hear of Mr. Nugan's death until the bank collapsed in April. It was "somewhat of a shock," he says, adding, "\$20,000 is a lot to a military man and his wife."

Col. Jimmy Maturo, since retired, was stationed in Hawaii when he deposited a total of \$27,000 on the recommendation of his old boss, Gen. Manor, he says. Col. Maturo deposited the last \$16,000 on March 12, 1980, long after Nugan Hand insiders began preparing for the bank's demise. "There are plenty of others (victims) around town," Col. Maturo said recently in Hawaii, adding a harsh comment about the "rats" who ran the company.

Gen. Manor's Role

Though the Philippines branch apparently wasn't authorized under Philippine law to take deposits, claims from Philippine residents have piled up at the liquidator's office in Hong Kong, which says that two of the documented claims were for \$1 million each.

In a recent telephone interview, Gen. Manor at first insisted that he "had nothing to do with Nugan Hand Bank." Faced with evidence, he said he "was brought in just to learn," and hung up. Records show that he worked for the bank at least as early as October 1979. Tony Zortilla, Nugan Hand's public-relations man, says that Gen. Manor managed the Philippine office. Gen. Manor's partner there, Wilfred P. Gregory, says that Gen. Manor kept offices for a while both at Nugan Hand and at the U.S. embassy, a few blocks away. Told all this in a second call, Gen. Manor replied, "Many things in your line of reasoning are in error." Asked what they were, he broke off the interview again and wouldn't say more.

Adm. Yates declined to discuss Nugan Hand, even after he was told that the evidence seemed to put him at the center of its operations. "You print whatever you want," Adm. Yates said. "I've never had any success in dealing with reporters."

In the three months immediately after Mr. Nugan's death, the bank appeared to be trying aggressively to bag all the cash it could despite the growing prospects of its liquidation. A rich source of funds was Saudi Arabia, where the bank hauled in an estimated \$5 million to \$10 million from Americans who worked there. The Americans got their salaries in cash and then had no place to invest it because Saudi banks pay only nominal interest.

Visits on Paydays

As described in a claim letter from Tom Rahill, an American working in Dhahran, Saudi Arabia, "Representatives would visit Aramco construction camps in Saudi Arabia

Please Turn to Page 10, Column 1

PK1SL1WH-02

Australian Mystery: The Collapse Of Bank Hurts U.S. Servicemen

Continued From First Page

shortly after each monthly payday. We 'investors' would turn over Saudi riyals to be converted at the prevailing dollar exchange rate and receive a Nugan Hand dollar certificate. . . . The moneys, we were told, were to be deposited in the Nugan Hand Hong Kong branch for investments in various 'secured' government bonds."

Aramco and other large U.S. concerns, including Bechtel, Henry C. Beck Co. of Dallas and University Industries Inc. of San Diego, are said by investors to have permitted sales solicitations of employees by the bank and let salesmen hold meetings on company property and use company bulletin boards.

"The companies were passing down to their employees that this was being made available, and they could put their money in and get 18%," says Linda Geyer, now of San Diego. When she lived in Saudi Arabia in 1979, her husband—who died recently of cancer—invested and lost \$41,481 with Nugan Hand, and her son, John H. Geyer, invested and lost \$32,500. Both men worked as plumbers with University Industries on a construction job run by the Beck company's Beck Arabia unit.

"Everybody said, well, Beck, they're not going in with just any old guy," says Mrs. Geyer. Nugan Hand's man in the area was Maurice Bernard Houghton, a Texan who was a close friend of Mr. Hand. Mrs. Geyer says that Mr. Houghton "only worked in cash. He left Beck, Bechtel and Aramco with so much money he could hardly even carry the case. One time he needed two briefcases. He used to brag about it. Some people I know lost \$100,000 or \$200,000 easy."

El Raji, the Money Changer

According to testimony that Mr. Houghton has given to Australian authorities, he was allowed into Saudi Arabia on sponsorship of the Beck company. Bill Millican, Beck International's U.S. director, says that he has "heard of" Mr. Houghton but that he doesn't know whether Beck sponsored him. "I'm not prepared to talk about it," he says. U.S. spokesmen for Bechtel and University Industries say they know nothing about Mr. Houghton.

Mr. Houghton has said that he also took money from U.S. Air Force personnel in Saudi Arabia. Highly critical of the banks there, he has said that he took the bags of cash he collected to a local money changer named El Raji, who converted it to \$1,000 Thomas Cook traveler's checks. He sent the checks to Singapore, where most of them were apparently cashed by Mr. Hand, who was running the operation there, or by a colleague.

At least one victim, Edward F. Pietro, wrote for help to Gen. Black, the president of Nugan Hand, Hawaii. Mr. Pietro had served with Gen. Black in World War II, and he says the names of Gen. Black and Adm. Yates on Nugan Hand's brochures were an important factor in his decision to put \$4,900 into Nugan Hand on April 8, 1980, just three days before it filed for liquidation. He says that Mr. Nugan, then dead two months, was "described as quite healthy" by the salesman.

Gen. Black wrote back that he was "truly sorry about the death of Frank Nugan and the subsequent liquidation of his banking empire," but offered no sympathy to Mr. Pietro and no apology.

A Smart Friend

In a recent interview, Gen. Black—who also is a former executive director of the Freedoms Foundation in Valley Forge, Pa.—said he hadn't obtained any deposits for the bank because "my friends were too smart to go putting their money out of the country for hidden interest. If somebody had given me money and this happened, I'd feel personally liable to pay them back if it was a friend of mine. But I don't feel guilty because some guy got swindled. My name isn't well known enough around the world to convince many people" to invest.

Apparently one smart friend of Gen. Black was Rear Adm. L.R. "Joe" Vasey, who preceded Adm. Yates in his strategic planning job and now runs a political-research organization from Honolulu. Adm. Vasey says that both Adm. Yates and Gen. Black tried to get him to invest but that he declined.

Less wise, or at least less lucky, was Saeed Moosavi Nejad, 52, an Iranian lawyer who with his wife and four young children had sought refuge in the U.S. from the Iranian revolution in 1979. Mr. Nejad told his story, in a pathetic letter written in his best English to the Nugan Hand liquidator and later repeated it for this newspaper. In the Washington, D.C., office of retired Brig. Gen. Erle Cocke, Mr. Nejad gave \$30,000—"only a saving made almost within the last 25 years in order to live"—to Nugan Hand representative George Farris, a former Green Beret friend of Mr. Hand. Mr. Farris had promised Mr. Nejad 14% interest on his nest egg compared with the 11% he was making at a local bank.

Scratching a Living

Mr. Nejad can't find a job now. He performs occasional Islamic weddings and otherwise lives off \$400 a month his oldest son makes at a Gino's fast-food restaurant. He is suing Mr. Farris in District of Columbia federal court. "I have spent my last pennies," he says.

Gen. Cocke says that he never knew that his good friend Adm. Yates had registered him with the Treasury Department as "person in charge" of Nugan Hand's Washington office. He says he thought Nugan Hand was just renting space from his public-relations business, though he agrees that they shared a phone number, address and receptionist. He agrees also that he visited Nugan Hand in Hong Kong, welcomed Messrs. Nugan, Hand and Houghton in Washington, and arranged high-level White House contacts for Adm. Yates and Mr. Nugan to help their efforts to move Indochinese refugees to a Caribbean island and salvage surplus U.S. military equipment.

Gen. Cocke denies Mr. Nejad's allegations that the general constantly reassured him about the safety of his deposit, though Gen. Cocke agrees that they met and talked often after the money was invested. He agrees that after the collapse he gave Mr. Nejad the name of a Hong Kong lawyer to represent him and that it was Nugan Hand's former in-house counsel (Elizabeth Thomson, who declined to talk to a reporter). He agrees that he told Mr. Nejad early on that he had more than \$30,000 of his own money

Australian Mystery

invested in Nugan Hand. He says he lost it. Mr. Nejad says Gen. Cocke told him that the deposit was retrieved after the collapse and that Mr. Nejad could get his money, too. If he went to Hong Kong and hired Miss Thomson, Mr. Nejad says he couldn't afford the trip.

Gen. Cocke says he is still friendly with Mr. Farris, who is back at Fort Bragg, N.C., the Green Beret headquarters, "doing some consulting — Mr. Farris won't say on what."

A Doctor's Dilemma

A heavy loser was an Australian couple, Dr. and Mrs. John K. Ogen, who not only put \$758,000 into Nugan Hand but also gave Mr. Nugan power of attorney over their affairs. After Mr. Nugan's death, Dr. Ogen says he was frightened and went to Mr. Hand, who "kept reassuring me that all was well and there was no reason to take my money back." Now, at age 62, he has returned to medical practice. Meanwhile, Australian tax officers are auditing him on the \$758,000 the couple had invested.

The Australian investigations of Nugan Hand customers aren't as heartless as they might seem. Many of the firm's transactions, with business customers particularly, were "wash sales" carried out solely to establish paper losses for tax purposes. Clients would invest money in various ventures Nugan Hand set up. Fees, usually 22%, were deducted, and the rest would be "lent" back to the client with a separate letter forgiving repayment.

The result is utter confusion over who is a debtor. Particularly involved are 252 clients on a list found with Mr. Nugan's body; many are Australian celebrities.

"I'm taking action against people for their own money," says the Australian liquidator, John O'Brien. "They gave it to Nugan, he put it in another company and lent it back to them. Well I say, that it's our (the creditors') money, and I want it back." The courts haven't spoken yet, and Mr. O'Brien hopes that many clients will settle his claims in order to keep the source of their income secret.

Overdrawn Bank Account

Mr. O'Brien has seized some assets, such as Mr. Nugan's \$1.3 million home that the company paid for. The Hong Kong official liquidator found only bank accounts that were overdrawn by a net \$685,000. Of the \$17.2 million listed on Nugan Hand's books as assets, some \$16.8 million turned out to be IOUs from Nugan Hand insiders or companies they controlled, according to the Hong Kong liquidators.

The one big institutional loser was Wing-On Bank in Hong Kong, which guaranteed—and has paid off—Nugan Hand's debts to Chase Manhattan Bank and other institutions that demanded guarantees from recognized banks before they took advantage of Nugan Hand's high interest rates. Wing-On itself supposedly was guaranteed against loss by blue-chip securities held in Sydney, but the blue chips were sold gradually after 1977 and replaced by Intracompany IOUs, leaving Wing-On short by more than \$3 million at the end.

Some \$1.5 million in insurance on Mr. Nugan's life proved uncollectible because a coroner's inquest ruled his death a suicide. The evidence all points to that conclusion, based on where the body was found and the angle of the fatal bullet. Fingerprints and photographs weren't taken at the site so the testimony of the lawmen who found the body can't be corroborated.

Australian Mystery

invested in Nugan Hand. He says he lost it. Mr. Nejad says Gen. Cocke told him that the deposit was retrieved after the collapse and that Mr. Nejad could get his money, too. If he went to Hong Kong and hired Miss Thomson, Mr. Nejad says he couldn't afford the trip.

Gen. Cocke says he is still friendly with Mr. Farris, who is back at Fort Bragg, N.C., the Green Beret headquarters, "doing some consulting — Mr. Farris won't say on what."

A Doctor's Dilemma

A heavy loser was an Australian couple, Dr. and Mrs. John K. Ogdan, who not only put \$758,000 into Nugan Hand but also gave Mr. Nugan power of attorney over their affairs. After Mr. Nugan's death, Dr. Ogdan says he was frightened and went to Mr. Hand, who "kept reassuring me that all was well and there was no reason to take my money back." Now, at age 62, he has returned to medical practice. Meanwhile, Australian tax officers are auditing him on the \$758,000 the couple had invested.

The Australian investigations of Nugan Hand customers aren't as heartless as they might seem. Many of the firm's transactions, with business customers particularly, were "wash sales" carried out solely to establish paper losses for tax purposes. Clients would invest money in various ventures Nugan Hand set up. Fees, usually 22%, were deducted, and the rest would be "lent" back to the client with a separate letter forgiving repayment.

The result is utter confusion over who is a debtor. Particularly involved are 252 clients on a list found with Mr. Nugan's body; many are Australian celebrities.

"I'm taking action against people for their own money," says the Australian liquidator, John O'Brien. "They gave it to Nugan, he put it in another company and lent it back to them. Well I say, that it's our (the creditors') money, and I want it back." The courts haven't spoken yet, and Mr. O'Brien hopes that many clients will settle his claims in order to keep the source of their income secret.

Overdrawn Bank Account

Mr. O'Brien has seized some assets, such as Mr. Nugan's \$1.3 million home that the company paid for. The Hong Kong official liquidator found only bank accounts that were overdrawn by a net \$685,000. Of the \$17.2 million listed on Nugan Hand's books as assets, some \$16.8 million turned out to be IOUs from Nugan Hand insiders or companies they controlled, according to the Hong Kong liquidators.

The one big institutional loser was Wing-On Bank in Hong Kong, which guaranteed—and has paid off—Nugan Hand's debts to Chase Manhattan Bank and other institutions that demanded guarantees from recognized banks before they took advantage of Nugan Hand's high interest rates. Wing-On itself supposedly was guaranteed against loss by blue-chip securities held in Sydney, but the blue chips were sold gradually after 1977 and replaced by Intracompany IOUs, leaving Wing-On short by more than \$3 million at the end.

Some \$1.5 million in insurance on Mr. Nugan's life proved uncollectible because a coroner's inquest ruled his death a suicide. The evidence all points to that conclusion, based on where the body was found and the angle of the fatal bullet. Fingerprints and photographs weren't taken at the site so the testimony of the lawmen who found the body can't be corroborated.

Australian Mystery

Banker Frank Nugan In Final Days Faced A Charge of Fraud

But His Violent Death Came As Surprise to Associates; His Partner Disappears

A Phone Call From 'Charlie'

By JONATHAN KWITNY
Staff Reporter of THE WALL STREET JOURNAL

SYDNEY, Australia—There were several reasons why Frank Nugan might have wanted to kill himself. But in January 1980, none of them were apparent to outsiders.

The 37-year-old co-founder of the Nugan Hand Ltd. private banking empire seemingly had the world on a string. His bank was taking in millions of dollars and had recently brought in a young American with impressive banking credentials to take some of the load off his shoulders. Mr. Nugan was negotiating to buy a multimillion-dollar estate for his family. And he apparently had whipped a serious drinking problem.

But as the fateful date of Jan. 26 approached, Mr. Nugan was confronted with

This is the last of a series of articles.

two serious legal problems that threatened possible ruin for his bank. In retrospect, moreover, there were signs of eccentric behavior that should have served as warnings.

Mr. Nugan had stopped spending most of his time at Nugan Hand's Sydney headquarters, and he was making more first-class jet trips around the world on missions his associates didn't always understand.

A Walk With Jesus

He began going to church daily and scriawling mystical notes in his Bible, which was always with him. A sample: "I place this day my life, my work, my loved ones in the Lord's hands. He is so good and it will be a good day I believe, I believe it will be a glorious, magical, miraculous day. He is with me now, Jesus walks with me now. Visualize 100,000 customers worldwide. Prayertize. Actualize."

One of Mr. Nugan's legal problems grew out of a 1977 scandal that had developed over a fruit and vegetable business run by Mr. Nugan's brother, Ken, in their home town, Griffith, 400 miles inland from Sydney. Several large insurance companies had acquired a 40% interest in the business during a 1973 stock sale to raise \$700,000 for a new cannery. Later, they complained that Ken Nugan was diverting funds.

Auditors discovered big cash payoffs to people apparently linked to narcotics traffic. Ken Nugan explained that the payments were to fruit farmers who wanted to remain anonymous for tax reasons and so were using "dope dealers' names as pseudonyms. Amid much publicity, Ken Nugan fired the auditors and kicked the insurance men off the company's board.

This was done at two rowdy shareholder meetings at which drunks and thugs with newly issued 10-share stockholdings packed the hall and swayed procedural votes. Frank Nugan had helped orchestrate his brother's strategy, and state officials filed fraud charges against both brothers and a private detective they hired.

Sitting With a General

During the two years of court hearings to see if the charges would be tried, one of the men often at Frank Nugan's side was U.S. Gen. Edwin F. Black, who, after his retirement as assistant Army chief of staff for the Pacific, had taken a job as the president of Nugan Hand Hawaii. Gen. Black says that he attended the court hearings just to satisfy his curiosity.

Frank Nugan protested loudly that Nugan Hand was unconnected to the fruit and vegetable business. But when Nugan Hand Ltd. collapsed in April 1980, a few months after Frank Nugan's death, John O'Brien, a liquidator, said in his initial report that a "third party"—known to be Ken Nugan—had received \$1.6 million that his brother had diverted from Nugan Hand. Some \$1.1 million of this is credited as having been paid back. Nugan Hand funds also are believed to have been used to pay the Nugans' legal bills.

There were few details in the records. Immediately after his brother died, Ken Nugan went through Frank's office and, witnesses say, removed armfuls of files. A Nugan Hand director, Stephen K.A. Hill, has said that Ken also transferred a lot of Nugan Hand's stock in the fruit company to the wives of Frank Nugan and Michael Hand, the vice chairman of the bank. Mr. Hill says he argued vainly that the stock should be an asset of the bank.

Less than a month before he died, Frank Nugan learned that he and his brother would be tried for fraud, a development that seemed sure to affect his bank's reputation. (Ken Nugan's trial now is scheduled for later this year, after many delays.)

A Problem With Price Waterhouse

The other problem probably weighing on Frank Nugan's mind on the night of Jan. 26 was the refusal of Price Waterhouse & Co.'s Bahamas office to sign Nugan Hand bank's books for the year ended June 30, 1979. (The Bahamian office covers the Cayman Islands, where the bank had legal headquarters because of the soft regulatory climate there.) Mr. Hill had taken the books to the Caymans in October 1979. The local Price Waterhouse partners had approved the books for the two previous years, but this time there was a new Price Waterhouse auditor on hand, Clive Jennings. He balked. "There were significant gaps in the records," Mr. Jennings says.

Mr. Hill has testified that he rewrote the accounts annually on instructions from Frank Nugan. He said that in 1979 his boss ordered \$4 million in customer accounts

Please Turn to Page 16, Column 1

PRISCILLA-03

Australian Mystery: Head of Nugan Hand Bank Had Serious Legal and Personal Problems in Final Days

Continued From First Page

written off as having been paid in cash, off the books. To clean the bank's books, these accounts were assigned to Nugan Hand Panama, which Mr. Hill said was mostly a reservoir for phony accounts needed to balance the books. Most of the bank's \$17 million in stated assets were really IOUs from companies that were secretly affiliated with it, and these bogus assets were altered as needed to even the numbers.

Mr. Hill has testified that he was accompanied on the 1979 meeting with Price Waterhouse by U.S. Adm. Earl "Buddy" Yates, a former high-ranking officer in the U.S. Pacific Command who had become president of Nugan Hand bank in 1977. Mr. Jennings and his supervising partner, Richard Harris, who signed the 1978 books but was away during Mr. Hill's visit in 1979, say that Adm. Yates was present in 1977 and 1978 but not in 1979. Mr. Jennings says that in 1979 he sent Nugan Hand's emissary, Mr. Hill, home with a list of information he needed, "and that was the last I ever heard from him."

With the problem unsolved, Mr. Nugan himself went to the Caymans on Jan. 14-16, 1980, just 10 days before his death. Cayman banking authorities had notified him that if Price Waterhouse hadn't certified the June 1979 books by Jan. 31, Nugan Hand bank itself would be decertified there. This would damage Nugan Hand's relationships with major commercial banks throughout the world. Already, because of the lapse in audits, authorities in Singapore had asked on Dec. 5 to see the books, and Mr. Hand was trying to hold them off.

Messrs. Jennings and Harris say they went to Mr. Nugan's hotel room on Jan. 14 and asked for the necessary information, and he told them, "You'll never guess what happened. I came all the way from Australia with the answers to your questions, but then I left the file back in Australia." They say it would have been a bulky file. They say that Mr. Nugan called his secretary in Sydney and told her to send the file. It never arrived.

Hiring a New President

Mr. Nugan was losing his grip on himself and his job. In October 1979, an American, Donald Beazley, had been brought in as president of the entire Nugan Hand group of companies. Mr. Beazley was Nugan Hand's first real banker. A former Federal Reserve bank examiner, he had become the president of Great American Banks Inc. of North Miami, Fla., when Marvin Warner, its chief executive, had left to become President Carter's ambassador to Switzerland. When Mr. Warner returned, Mr. Beazley left to run Nugan Hand. Mr. Beazley is now the president of Gulfstream Bank in Boca Raton, Fla., whose one-bank holding company is listed on the New York Stock Exchange.

Mr. Beazley has told interviewers—including this newspaper—that he never really was the president of Nugan Hand, but "was just there on an interim basis (to) see if I liked what I would find." He has said that he left when Nugan Hand couldn't produce a satisfactory balance sheet and Mr. Nugan died.

That isn't the way he talked, however, in

October 1979, when Nugan Hand's representatives from all over the world were flown at huge expense to Sydney for a conference. Mr. Beazley was presented as the new boss. Messrs. Nugan and Hand said that they would be reduced to broad policy makers and that all orders would come from Mr. Beazley from now on.

'Mike, Frank and Buddy'

Mr. Beazley, after being praised by Adm. Yates as "the finest banker in the United States under the age of 35," said, "It is a privilege and an honor for me to be president (of) this company." He said he had "had the opportunity to see it grow" during a close 2½-year relationship with "Mike and Frank and Buddy," and added that "the decision that I would want to be associated with this group" was "one of the best ones I've ever made, decision-wise."

He told the group, "You're fortunate to have probably one of the best money-market operators that I've ever seen and certainly one of the highest-qualified tax desk departments or divisions of firms that I've ever seen." This, even though Nugan Hand's money-market operations were consistent and intentional money losers, as the bank built up deposits by offering investors much higher interest rates than Nugan Hand got by investing the money for its own account. (The Hong Kong liquidator's office has calculated that from 1976 to its demise, Nugan Hand lost \$7.9 million in trading securities.) And many of Mr. Nugan's tax schemes later proved to be scarcely veiled frauds.

Hearing his words of praise for Nugan Hand repeated from transcripts of tape recordings obtained by this newspaper and verified, Mr. Beazley said that it was possible that he had said such things but that he couldn't remember. He also conceded the possible accuracy of reports that as late as March 1980, he had assured people that the bank was solid and would continue.

Lots of Gold Braid

Other leading lights at the October 1979 meeting were Adm. Yates; Gen. LeRoy J. Manoir, the retired chief of staff for the U.S. Pacific Command; Walter McDonald, the recently retired deputy CIA director, and Guy Pauker, a consultant to various U.S. defense and security agencies. Gen. Manoir helped run Nugan Hand's Philippine office, and Messrs. McDonald and Pauker had become consultants to the firm.

Everyone praised Nugan Hand lavishly and pledged tireless efforts to make it grow. But there were some disquieting notes, too. Representatives from Malaysia, Taiwan and Singapore openly expressed their uneasiness about what the Malaysia man called "our present non-official banking activities." All of these countries and others in the region, including Australia, have tight restrictions on taking money out of the country, which was Nugan Hand's main attraction in luring customers. Nugan Hand was allowed into many countries only under the belief that it was an international trade broker.

Nobody mentioned the books that Price Waterhouse had refused to certify two weeks earlier. Mr. Nugan seemed his charming, chipper self. But he, like his bank, was unravelling.

That summer his American-born wife, Lee, had returned to her parents in Nashville, Tenn., taking the couple's two children. Records show that she ran up \$21,200 in bills on her American Express card in nine months. Australian liquidator John O'Brien says that she also took \$1 million in traveler's checks with her. She has resisted numerous attempts by this reporter to interview her.

Going on the Wagon

Close friends of Mr. Nugan say that he wanted her back. He went on the wagon, ending a bottle-a-day Scotch habit, and he took off nearly 50 pounds—all in six months. He spent money in manic style. He paid about \$500,000 to remodel the couple's lavish waterfront home (sand reportedly was hauled in for a beach) to impress his wife. But by several accounts she was revolted by his poor taste when she saw it on a brief trip home to attend a wedding at Christmas of 1979.

Mr. Nugan flew back to the U.S. with her on Jan. 9, 1980, but then was off alone to Florida, the Caymans and Switzerland, where he and Mr. Hand reportedly sought United Nations money for their refugee project. He apparently talked to former CIA Director William Colby and made plans to see him the next month. He told people that he was moving to the U.S. and entered negotiations to buy a Florida condominium.

He was back in Sydney Jan. 25. The next day he agreed to close another purchase: a \$2.2 million country estate he had dickered over for months—828 landscaped acres and a mansion—"the finest in Australia," he told its owners, a family named Darling. The deal was never consummated. That night he died.

Mr. Hand and the other Americans running the bank appeared to witnesses genuinely surprised by his death—and the sudden desperateness of the situation. Some big withdrawals were made about this time. Maurice Bernard Houghton, a mysterious Texan who played a big part in the bank's affairs, withdrew \$150,000 in February; he has said that he used the money on company business in Europe. Mr. Beazley withdrew \$200,000, which was transferred to his account in Florida; he says he can't remember what the money was for, but that he has repaid it though he can't prove it.

Gen. Manoir Leaves Manila

When Nugan Hand's liquidation came on April 11, 1980, Wilfred Gregory of the firm's Manila office says that he and Gen. Manoir were warned by their lawyer, William Quasha, to leave the Philippines or they "could wind up in jail." Mr. Gregory says that he stayed but that Gen. Manoir left overnight. Gen. Manoir, now running a retired officers' association in Virginia, wouldn't say when or why he left the Philippines, and Mr. Quasha says he can't discuss his advice to a client. Mr. Gregory kept the office for consulting work; he won't name his clients. His new partner was Philippine President Ferdinand Marcos's brother-in-law Ludwig Rocka, until Mr. Rocka's recent death.

Also as Nugan Hand's liquidation began, Mr. Houghton notified several of the firm's agents in Saudi Arabia to get out fast. There

had been a similar evacuation in January when Mr. Nugan died, but when things cooled off the salesmen returned. In April they barely escaped. "The situation became somewhat violent," Mr. Houghton has recalled. "The bank branch . . . was severely damaged by the depositors after Mike Murphy (the bank representative) left," he said.

In June 1980, Michael Hand, the firm's co-founder, went into hiding in an apartment next to a butcher shop owned by Robert W. Gehring. Mr. Gehring, a former U.S. Army sergeant, worked for Bernie Houghton. The three men had been close since Vietnam War days; Mr. Hand had been a Green Beret and then an undercover operative, and Mr. Houghton was a big trader throughout Southeast Asia. Mr. Gehring's shop was the place where many of Nugan Hand's records were secreted after Mr. Nugan's death. Mr. Gehring has testified that Mr. Houghton asked him to help Mr. Hand flee from Australia.

Mr. Gehring says that he conned an employee, Alan Winter, into lending him his birth certificate, which Mr. Gehring then used to obtain a passport in Mr. Winter's name without his knowledge. Mr. Hand's U.S. passport had been seized the previous December by the U.S. consul in Singapore because the Bronx-born American had become an Australian citizen. He had been warned that Australian immigration officials were under orders not to let him leave under his own passport.

The Phony Passport

Mr. Gehring has testified that a mysterious American named "Charlie," identified only as an old Army buddy of Mr. Hand's, showed up in Australia, created a disguise for Mr. Hand and arranged for him to travel to the U.S., via Fiji and Vancouver. Mr. Hand left in mid-June, and Mr. Gehring says he concealed his friend's departure for a week. Mr. Hand left his wife Helen behind, and she is still living in Australia.

So far, the only charges by Australian authorities in the Nugan Hand affair are against Michael Moloney, Mr. Houghton's lawyer, and Patricia Swan, Mr. Nugan's secretary, for allegedly obstructing justice during the destruction of records after Mr. Nugan died. Mr. Moloney concedes in an interview that he advised Mr. Hand to remove the firm's records, but he says he is being made a scapegoat in the case. Mrs. Swan has refused to be interviewed.

In February 1981, Mr. Gehring has testified, he was visiting his brother in San Francisco when he got a call from "Charlie." They arranged for Mr. Gehring to go to a pay telephone booth at the airport. At the appointed time, a call came from Mr. Hand, whereabouts unidentified. He asked about his wife and friends and said he wasn't using Mr. Winter's identity anymore. That is the last time anyone says he has talked to Mr. Hand.

responsibility for election outcome in this
is taken by David Hickey, Editor, 235
New Street, Broadway, Sydney 2007.

A sub-committee has listed six
options:

- That the council renew its lease

subsidised the pool operation by
more than \$10,000.

"We pay what we were asked to
pay but I suppose sooner or later we

operated on the site, we
received from local residents, the
bulk in favour.

The council then returned to the
department seeking renewal of the

and the department now had to
down and see if they could piece it all
together. — GAVIN CANTLON

The elusive Mr Hand's on the move again

WOULD Australian authorities
have trouble arresting the fugitive
banker, Michael Hand, at his home
in Washington State, they could
always get in touch with his wife
Helen.

Hand has been expecting to join
his wife, who is now using the name
Helen Davies, in France in the next
few months.

A former CIA contract employee,
Hand has spent the past 10 years
eluding the feeble efforts of Australian
authorities to execute a warrant
for his arrest following the collapse of
the Nugan Hand Bank in 1980.

As was revealed in *The Eye*
magazine last week, Hand and his
wife have been living in Bellevue,
near Seattle.

Hand left Australia on a false
passport in June 1980 while his wife,
who still travels on an Australian
passport, left to join him in 1983.

The couple lived in Phoenix,
Arizona, and in Coeur d'Alene,
Idaho, before moving to Washington
State.

The *Sun-Herald* has learnt Helen
Hand (Davies) is now living in
France where she is attending the
Institute of American Studies on the
Rue du Bon Pasteur, Aix-en-Pro-
vence.



BRIAN TOOHEY

She used her Australian birth
certificate to get her passport
renewed for this trip to France and to
return to Australia last year.

These activities, however, did not
catch the attention of the Australian
authorities who might have been
expected to maintain an interest in
her movements if they wanted to
catch her husband.

The Australian Federal Police are
supposed to maintain close liaison
with the FBI while our intelligence
services boast about even more
intimate relations with their US
counterparts.

It seems inconceivable that US
authorities did not know Hand had
returned, yet nothing appears to have
been passed along the intelligence or
police channels to Australia.

The warrant for Hand's arrest was
issued after documents were
destroyed following the collapse of
the bank he had co-founded with
Frank Nugan in the mid 1970s.

The collapse occurred after Nugan
was found shot dead in January 1980
— the official verdict was suicide.

One director subsequently stated
on oath that Hand had warned, "If
we didn't do what we were told, our
wives would be cut into pieces and
put in boxes and sent back to us."

Millions of dollars were discovered
to be missing from the bank which
had specialised in shifting "black
money" around the globe for custom-
ers, including drug dealers such as
the Mr Asia and Murray Riley
syndicates, tax evaders, intelligence
agencies and gun runners.

True to form, leading Australian
banks and international auditing
firms had given Nugan Hand the
thumbs up until its questionable
activities became too glaringly obvi-
ous.

Unhappily for the Australian law
enforcement system, no one has ever
gone to trial in the wake of the Nugan
Hand debacle.

The failure to nail those responsi-

ble for the missing millions let alone
for anything else) sent a clear signal
to the corporate cowboy that it
would be open slather for the rest of
the 1980s.

If tough action had been taken on
Nugan Hand we might have been
spared at least some of the corporate
skulduggery that subsequently
ensued.

Both the NSW Corporate Affairs
Commission and a joint Federal-
State police task force made a good
start on investigating the bank before
the job was handed over to a royal
commission conducted by Justice
Donald Stewart.

Although not a single prosecution
resulted from this the royal commis-
sion, Stewart subsequently was made
inaugural head of the National Crime
Authority.

As royal commissioner he paid
particular attention to attacking
claims about Nugan Hand's intelli-
gence links.

Nevertheless, a highly regarded
Wall Street Journal writer, Jonathon
Kwitny, had no doubt about the
links, writing a book on the topic
called *The Crimes of Patriots*.

Many of the key Nugan Hand
figures were later revealed as deeply

involved in the Irangate scandal
involving the sale of arms to Iran to
help finance Contra rebels in Nicara-
gua.

Apart from the revealing fact that
documents on Nugan Hand sought
from the FBI under the Freedom of
Information Act were withheld on
national security grounds, detailed
information about the bank's intelli-
gence connections has been provided
by several ex-CIA officials.

The former head of the 'covert
action in the agency, Ted Shackley,
told Australian police that Hand had
worked with him in the CIA in Indo-
China.

Stewart was given a copy of this
record of interview yet overlooked
this admission when dismissing
claims about Hand's links to the CIA.

There should be nothing surprising
about the "dirty tricks" side of the
CIA using an organisation such as
Nugan Hand.

Yet, while Stewart was busy trying
to rebut these revelations, the bank
was allowed to get away with
behaviour that became a model for
much of the corporate roguery that
flourished in the '80s.

● Brian Toohey is editor of *The Eye*
magazine.

Experts
move on bank
CM
Apr 3 1991

PRISL/WH-04

...portunity for election comment in this
be is taken by David Hickey, Editor, 235
nes Street, Broadway, Sydney 2007.

A sub-committee has listed six
options:
● That the council renew its lease

...last year
...operation by
more than \$10,000.
"We pay what we were asked to
pay but I suppose sooner or later we

...the bank, ...
received from local residents, ...
bulk in favour.
The council then returned to the
department seeking renewal of the

and the department now had to ...
down and see if they could piece it all
together. - GAVIN CANTLON

The elusive Mr Hand's on the move again

HOULD Australian authorities
... trouble arresting the fugitive
... Michael Hand, at his home
... Washington State, they could
... ways get in touch with his wife
... Helen.

Hand has been expecting to join
his wife, who is now using the name
... Helen Davies, in France in the next
... months.

A former CIA contract employee,
Hand has spent the past 10 years
... the feeble efforts of Australian
... authorities to execute a warrant
... his arrest following the collapse of
... the Nugan Hand Bank in 1980.

As was revealed in *The Eye*
magazine last week, Hand and his
wife have been living in Bellevue,
near Seattle.

Hand left Australia on a false
passport in June 1980 while his wife,
who still travels on an Australian
passport, left to join him in 1983.

The couple lived in Phoenix,
Arizona, and in Coeur d'Alene,
Idaho, before moving to Washington
State.

The *Sun-Herald* has learnt Helen
Hand (Davies) is now living in
France where she is attending the
Institute of American Studies on the
Rue du Bon Pasteur, Aix-en-Pro-
vence.



BRIAN TOOHEY

She used her Australian birth
certificates to get her passport
renewed for this trip to France and to
return to Australia last year.

These activities, however, did not
catch the attention of the Australian
authorities who might have been
expected to maintain an interest in
her movements if they wanted to
catch her husband.

The Australian Federal Police are
supposed to maintain close liaison
with the FBI while our intelligence
services boast about even more
intimate relations with their US
counterparts.

It seems inconceivable that US
authorities did not know Hand had
returned, yet nothing appears to have
been passed along the intelligence or
police channels to Australia.

The warrant for Hand's arrest was
issued after documents were
destroyed following the collapse of
the bank he had co-founded with
Frank Nugan in the mid 1970s.

The collapse occurred after Nugan
was found shot dead in January 1980
— the official verdict was suicide.

One director subsequently stated
on oath that Hand had warned, "If
we didn't do what we were told, our
wives would be cut into pieces and
put in boxes and sent back to us."

Millions of dollars were discovered
to be missing from the bank which
had specialised in shifting "black
money" around the globe for custom-
ers, including drug dealers such as
the Mr Asia and Murray Riley
syndicates, tax evaders, intelligence
agencies and gun runners.

True to form, leading Australian
banks and international auditing
firms had given Nugan Hand the
thumbs up until its questionable
activities became too glaringly obvi-
ous.

Unhappily for the Australian law
enforcement system, no one has ever
gone to trial in the wake of the Nugan
Hand debacle.

The failure to nail those responsi-

ble for the missing millions (let alone
for anything else) sent a clear signal
to the corporate cowboys that it
would be open slather for the rest of
the 1980s.

If tough action had been taken on
Nugan Hand we might have been
spared at least some of the corporate
skulduggery that subsequently
ensued.

Both the NSW Corporate Affairs
Commission and a joint Federal-
State police task force made a good
start on investigating the bank before
the job was handed over to a royal
commission conducted by Justice
Donald Stewart.

Although not a single prosecution
resulted from this the royal commis-
sion, Stewart subsequently was made
inaugural head of the National Crime
Authority.

As royal commissioner he paid
particular attention to attacking
claims about Nugan Hand's intelli-
gence links.

Nevertheless, a highly regarded
Wall Street Journal writer, Jonathon
Kwitny, had no doubt about the
links, writing a book on the topic
called *The Crimes of Patriots*.

Many of the key Nugan Hand
figures were later revealed as deeply

involved in the Irangate scandal
involving the sale of arms to Iran to
help finance Contra rebels in Nicara-
gua.

Apart from the revealing fact that
documents on Nugan Hand sought
from the FBI under the Freedom of
Information Act were withheld on
national security grounds, detailed
information about the bank's intelli-
gence connections has been provided
by several ex-CIA officials.

The former head of the 'covert
action' in the agency, Ted Shackley,
told Australian police that Hand had
worked with him in the CIA in Indo-
China.

Stewart was given a copy of this
record of interview yet overlooked
this admission when dismissing
claims about Hand's links to the CIA.

There should be nothing surprising
about the "dirty tricks" side of the
CIA using an organisation such as
Nugan Hand.

Yet, while Stewart was busy trying
to rebut these revelations, the bank
was allowed to get away with
behaviour that became a model for
much of the corporate roguery that
flourished in the '80s.

● Brian Toohey is editor of *The Eye*
magazine.

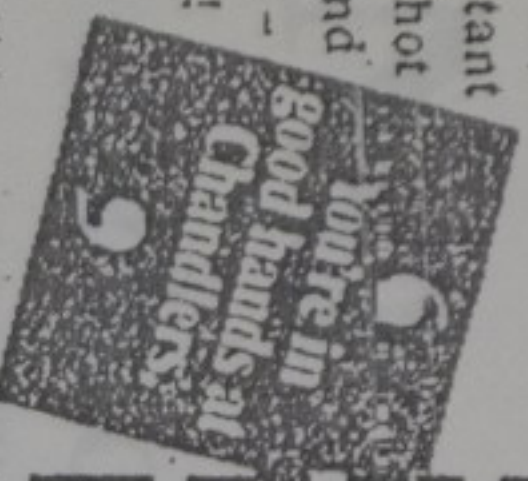
Experts
move on bank

CM
APR 3 1991

1104

xperis
 us ino
 stei!

nd get instant
re! We're not
e we stand
e experts -
handlers!



las 315 Litre
k Hot Water Systems
ize for a household up to 5
money on hot water bills
antly

Class 250 Litre Hot Water
Units • Suit smaller households
and maintain pressure hot water
on every tap • Saves you money
on hot water bills • 5 year warranty

50

Rheemelas 400 Litre Hot Water Systems • Ideal for
• 5 year warranty
• your money on hot water bills

s729

lets

26.51	SPRINGWOOD	208,119
25.44	STAYFLIND	186,779
25.33	STONES CREEK	167,314
23.72	STATHING	159,432
20.8	SUNSHINE PLAZA	245,453
19.2	SUNSHINE MILLS	245,533
18.8	TOONGAL	273,566
14.18	TOONGAL VILLAGE	246,912
14.18	WARRIDALE	201,588
11.1	WARRIDALE PLAZA	208,046
0.21	WARRIDALE PLAZA	208,100

5 SOUTH WALKER, SYDNEY.
 10 STORES IN AUSTRALIA.

no extradition
move on bank
CM APR 3 1991
fraud suspect

CANBERRA: Australian authorities are showing almost no interest in pursuing Australia's most notorious suspected criminal in the United States.

Despite evidence of large-scale company fraud and tax rorts, Canberra appears uninterested in extraditing Michael Hand

Hand, 49, is the former joint director of the Nugan Hand Bank, which was embroiled in a worldwide financial scandal when it collapsed in 1980.

Intelligence sources and *Eye* magazine have said he is living quietly at Suite 374, 1075 Bellevue Way, NE Bellevue, Seattle, Washington State.

Inquiries to Federal and New South Wales authorities in the past week have met a brick wall in trying to find anyone interested in Hand.

Stewart royal commissioner's conclusion that the Nugan Hand Bank was involved in fraud on a scale unseen previously in Australia.

The *Eyn* magazine editor Mr Brian Toohy said he felt Australian authorities' lack of interest was because of a "fear here of getting offside with US intelligence networks and they think Michael will be protected by them."

Authorities were alerted to the whereabouts of Hand, a former American Green Beret in Vietnam, when his Australian wife renewed her passport recently.

Mr Justice Stewart found the Nugan Hand Bank had breached at least 370 foreign-exchange controls involving \$16.3 million and was involved in tax evasion.

As well, \$50 million of investors' money in the bank was lost.

The office of the Fed-

eral Justice Minister, Gustav Tate, and Federal police say they have no interest in Hand.

NSW police have refused to acknowledge to the media that they even know who Hand is.

The National Crime Authority and the Australian Security Intelligence Organisation have refused to comment, as is normal in such cases.

Sources at the Austri-

Now who H2ND is

The National Crime Authority and the Australian Security Intelligence Organisation have refused to comment, as is normal in such cases.

Sources at the Australian Securities Commission have speculated the crash might never be pursued because of its age.

The office of the Federal Attorney-General, Mr Duffy, said it had not received a request from any authority to extradite Hand.

The other former Nugan Hand Bank joint director, Frank Nugan, was found dead of shotgun wounds in 1980. His death was deemed to have been suicide.

- GLENN STANAWAY

A wishful
dip leads
to charge

A MAN'S midnight dip in a Fortitude Valley wishing well netted him a pocketful of mouldy coins, the Brisbane Magistrates Court was told yesterday.

Samuel Thomas Wick, 33, unemployed, of Harcourt St., New Farm, was charged with having stolen \$5.52, the property of Brisbane City Council, from the Chinatown Mall fountain.

The police prosecutor, Sgt Robert Evans, said Wiki had swum naked in the fountain at 12.30am yesterday.

Police had found a large amount of change in his shorts pockets.

Wiki pleaded guilty and said he had taken the money to buy food.

Mr. W. McKay, S.M., discharged Wit, and told him to leave the money in the fountain as usual.

29-Test career, including a record 451-run partnership with Sir Donald Bradman against England at the Oval in 1934.

tween Ponsford, Bradman and Rum-pet, Johnson told ABC radio yesterday, but while he was overshadowed by Brad-

**No doubt on result
in referendum count**

The result in the re-franchising four-year state parliamentary terms was now virtually beyond doubt, a State Electoral Office spokesman said yesterday.

Only absentee votes are still to be counted.

The vote count was 749,946 (47.90 percent) in favor and 791,614 (50.56 percent) against.

The informal tally was
26,095 (1.54 percent)
The total votes counted

The spokesman said counting was expected to close on Friday. More than 2000 absentee votes not yet counted would not change the result.

change the result.

The majority of informal votes in the referendum were deliberately informal. They were either a blank ballot paper, a straight line drawn across the paper or a written message or slogan.

MARCUS (coater, 29, of Cam Hill, will leave Brisbane this week on a five-month walk to New York with Lady Di — a TV star).

Marcus, above, bought Lady a 9-year-old female donkey, 20 months ago from the caretter of the Cleveland Animal For Mrs. Debbie Roman, for \$100.

She had owned Lady Di about three years and that is where she got her leg in the showbiz de-

"She has a real star quality," Marcus said. "She has been in several films and the television se-

"She has a real star quality," Marcus said. "She has been in several films and the television set

PR/SL/NT-05

- Bill Korman
- Bruce Thompson

PR 15L1MH-08

PRISL/NH-06

CANBERRA TIMES, MONDAY, APRIL 8 1991

No extradition for I

Lack of interest in bank director 'asto

By ROD CAMPBELL

It seems almost certain that no-one in Australia will be seeking to have Michael Hand, one-time director of the failed Nugan Hand Bank, extradited from the United States to face criminal charges.

A warrant for Mr Hand's arrest has been in existence for more than 10 years but it is highly unlikely that it will ever be executed.

In fact, the warrant might no longer justify Mr Hand's extradition, given subsequent events.

The warrant alleges that Mr Hand and two other former Nugan Hand employees conspired to pervert the course of justice and breached the companies code. The allegations relate to alleged attempts to thwart a NSW Corporate Affairs Commission investigation of the collapse of the Nugan Hand Bank in early 1980.

Charges against Mr Hand's alleged co-conspirators were dropped several years ago. It might, therefore, be difficult to obtain a conspiracy conviction against one person only (ie, Hand). It might be even harder to use the charge as justification for an expensive extradition application in the US.

The remaining charges were brought under the Companies Code. The five-year limit in which

to begin proceedings has long since expired.

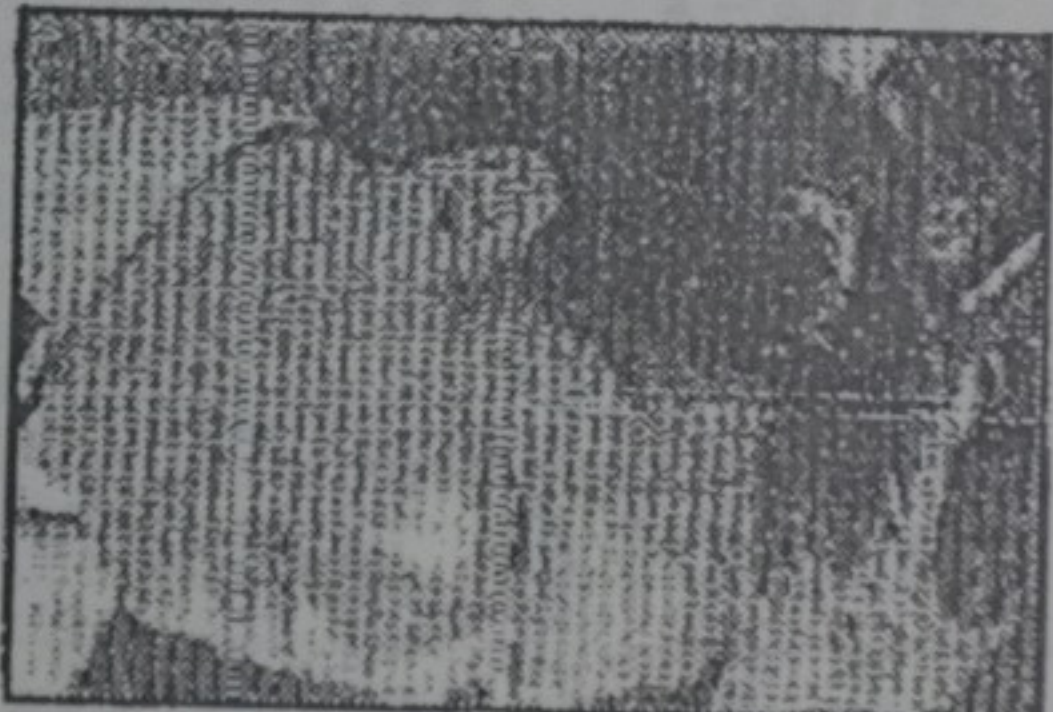
It would appear, therefore, that without fresh charges being prepared, there is no legal basis upon which Mr Hand could be extradited to Australia. It is understood that no such charges exist and that there are no plans to initiate any.

Accordingly, Michael Jon Hand, 49, of Suite 327, 1075 Bellevue Way, NE Bellevue, Washington State, USA, is likely to remain a free man indefinitely.

The Nugan Hand empire collapsed after the death of another director, Frank Nugan. Two coronial inquiries found that Nugan committed suicide, shooting himself as he sat in his Mercedes near Lithgow, NSW. Despite those findings, there are still those who believe he was murdered.

Before his death, Nugan and his brother, Ken Nugan (who died in 1986), had been charged with defrauding their companies. Ken Nugan was jailed later. The allegations undermined confidence in the group and are said to have led to Frank Nugan's suicide.

The bank collapsed, millions of dollars in depositors' funds missing. The extent of the total deficiencies is unknown. They apparently amounted to a few million dollars in the NSW-incorporated companies — "peanuts", as some-one close to Nugan Hand investigations said last week.



Michael Hand: likely to remain a free man.

The losses elsewhere, particularly in Hong Kong, where the bank was formally based, were probably much larger. The bank was actually registered in the Cayman Islands.

The total deficiency banded about over the years has ranged from \$7 million to \$24 million.

Mr Hand's present residential address — in Seattle, Washington — has been published recently in the Press but this has not elicited much response from the authorities.

Mr Hand does not appear to be on the active-investigation list of any Australian law-enforcement or regulatory body. The Canberra Times has approached several of these in the past 10 days but has been unable to find one that was particularly interested in locating Mr Hand, let alone seeing him returned to Australia.

Those contacted were the NSW and Victoria Police; the Australian Federal Police; the National Crime Authority; the office of the Federal Director of Public Prosecutions; the Australian Securities Commission; the Australian Taxation Office; and the Attorney General's Department.

Most had no interest in Mr Hand or his whereabouts. The Australian Taxation Office seemed more interested than most.

The NSW Police expressed some interest and suggested that discussions might be held with "corporate affairs" (now the ASC) because that organisation had instituted criminal proceedings in the first place.

That interest seems to have evaporated. The ASC is not interested in Mr Hand, and his name does not appear on its investigation list. It suggested the NSW Fraud Squad, but that is not investigating him either.

The official liquidator of the NSW-Land Nugan Hand companies, a Sydney chartered account-

Ponsford, master batsman, dies at 90

MELBOURNE: Tributes flowed yesterday for Australian cricket great Bill Ponsford, who died in a country nursing home north of Melbourne yesterday.

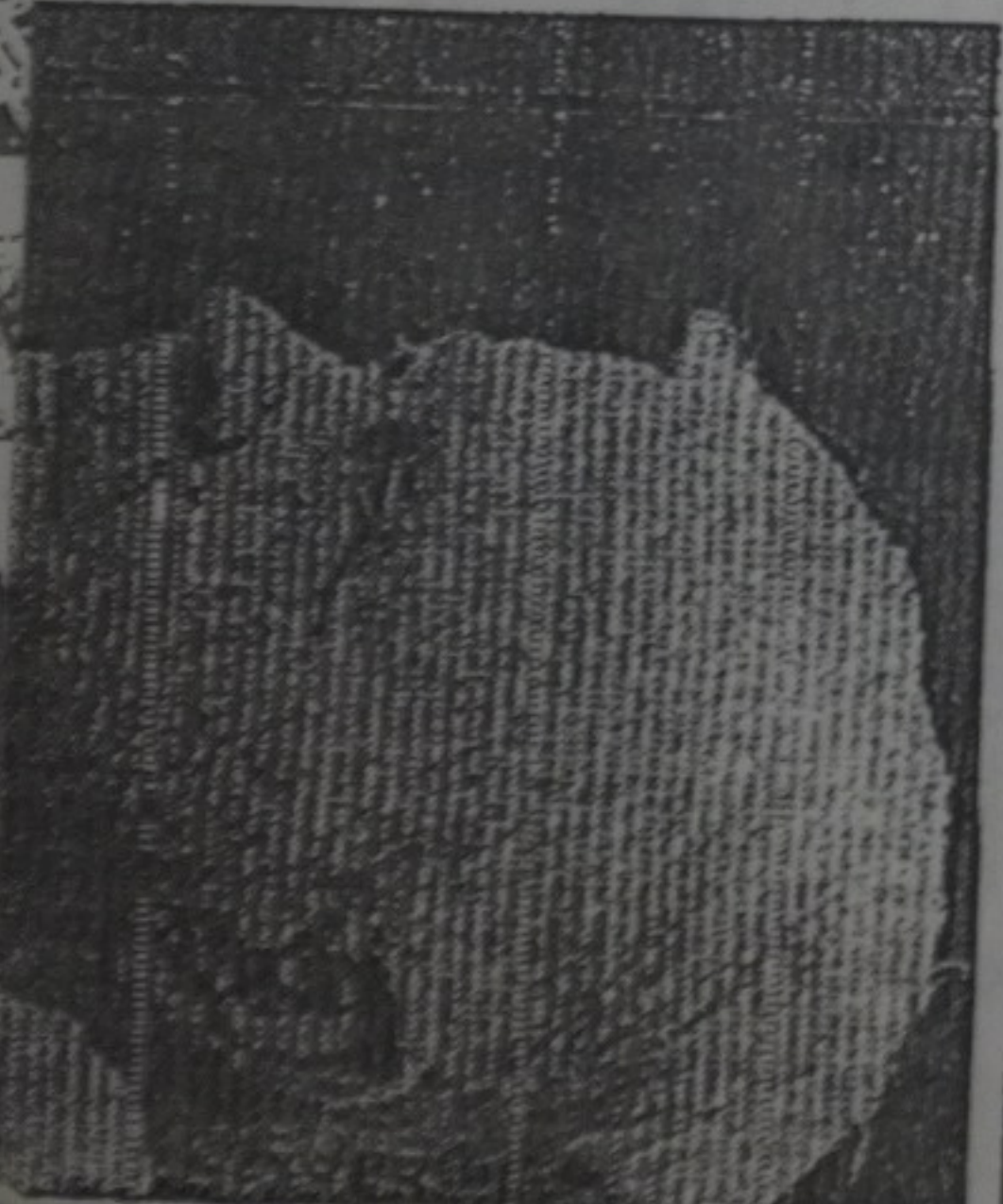
Ponsford, one of the world's most prolific batsmen of the 1920s and 1930s, died peacefully in his sleep, aged 90, a spokeswoman for the nursing home said.

"Ponny" retired seven centuries in a 29-Test career, including a record 451-run partnership with Sir Donald Bradman against England at the Oval in 1934.

ball would land, showed up particularly against spin bowlers.

A former Australian captain and the Melbourne Cricket Club's secretary, Ian Johnson, said Ponsford had been one of the three greatest batsmen the country had produced.

"Had Bradman come 10 years later the great combinations would have been between Ponsford, Bradman and Irumper," Johnson told ABC radio yesterday, but while he was overshadowed by Brad-



Hand nishing'

tant, John O'Brien, was approached. He said he had no particular interest in Mr Hand because there were no issues on which he might be questioned which were likely to benefit creditors.

The Nugan Hand issue — which was reported on by the Stewart Royal Commission in 1985 — has been raised also with the offices of the Prime Minister, Bob Hawke; the Federal Attorney-General, Michael Duffy; the NSW Premier, Nick Greiner; the NSW Attorney-General, John Dowd, and the NSW Police Minister, Ted Pickering. Matters relating to Royal commissions are the responsibility of the Prime Minister and/or Premier.

The overwhelming lack of interest in Mr Hand is astonishing.

For two years, between 1983 and 1985, Justice Donald Stewart investigated the group's activities. While his Royal commission ruled out any involvement in the CIA or in drugs and arms-running, it said the group had committed many breaches of foreign-exchange regulations, had been involved heavily in tax-evasion schemes, and had been involved in other fraudulent conduct under Commonwealth and NSW company law.

Justice Stewart did not say publicly who had been responsible for these offences. That section of his final report was suppressed.

Despite the judge's findings, not a single person was charged.

Man 'staggered' by FBI's visit to discuss Nugan Hand's affairs

Despite the finding of the Stewart Royal Commission that the Nugan Hand Bank had had nothing to do with United States intelligence, the CIA and the FBI took an extraordinary interest in the aftermath of the bank's collapse.

The FBI sent an agent to Australia to talk to people involved in the investigation of the bank's affairs. One of those people has told *The Canberra Times* that the agent questioned him about Michael Hand and his alleged CIA links.

The then director of the CIA, William Colby, actually wrote to the person about Mr Hand and Operation Phoenix investigations in the US involving the Irangate scandal.

While detailed investigations of Nugan Hand's financial affairs failed to disclose any CIA links, *The Canberra Times*'s informant said he had been "staggered" by a conversation he had with police at the time; the Colby letter; and the FBI visit. He did not expand on the contents of the conversation with police.

The man did not think Mr Hand had been a CIA agent during his time in Australia — although he had been a "hatchet man" for it in South-East Asia in previous years — but had been trying to create an

"aura" by suggesting an association. The CIA-FBI approach after the bank's collapse had made him wonder if there was more to it.

Doubts about the official finding that Nugan Hand had no links to the CIA is shared by Brian Toohey, editor of *The Eye* and a former editor of *The National Times*.

In the most recent issue of *The Eye*, Toohey said Justice Stewart's findings had ignored the fact that in an interview with Australian police, the CIA's "most famous 'dirty tricks' operative", Ted Shackley, had admitted freely that Mr Hand had worked for him in the CIA in Indochina. Toohey pointed out also that many key Nugan Hand figures had been shown later to have been involved deeply in the Irangate scandal, involving the sale of arms to Iran to finance Contra rebels in Nicaragua.

Toohey said a recently published book, *Kiss The Boys Goodbye*, had quoted a former high-ranking CIA official as saying that Nugan Hand had been the vehicle to finance a covert war in Indochina after the Vietnam War had ended.

— ROD CAMPBELL

Victoria issues guide to preven harassment

MELBOURNE: A guide to prevent sexual harassment in the workplace was issued yesterday by the Victorian Government.

Aimed at employers, the guide provides advice on how to encourage a productive work environment in which sexual harassment is discouraged.

Issued by the Minister for Labour, Neil Pope, the guide details also the steps employers should take if a case of sexual harassment is brought to their attention.

"Employers should be aware that sexual harassment is against the law. Employees have the right to work in a healthy and safe workplace, free from sexual harassment," he said.

The guide suggests that employers should draw up and make widely known a clear policy that sexual harassment will not be tolerated in the workplace.

The guide asks employers also to develop effective in-house procedures for resolving complaints of sexual harassment, including appointing a sexual-harassment counsellor.

A Federal Government study issued in Sydney on Friday said that a program

against sexual harassment could not succeed without the commitment of senior management, but it many managers were interested. The Affirmative Action Agency pay found that many employers still had their eyes set to harassment going on in their workplaces.

Mr Pope said victims of sexual harassment should not be forced to suffer degradation in silence or resign from their jobs.

"The law clearly puts the onus for preventing sexual harassment on the employer and on supervisors," Mr Pope said.

Employers are obliged under the Federal Sex Discrimination Act and the Victorian Equal Opportunity Act to prevent sexual harassment in the workplace.

As more and more women become aware of their rights, the number of sexual-harassment inquiries to the Victorian Equal Opportunity is increasing.

NUGAN HAND BANK

PR 15L1MH-08

are-blowing on Westpac

THE AGE

JUNE QUARTER 1991

\$3.50

Brian Toohey:
new light on
WA Inc.

We find
Mike Hand's
hide-out

Civil war in
the Federal
Police

How Packer
was fooled by
a forgery

The ABC wars

For the stories the big boys won't print, *Sailor* is the only place to go.

Registered by Australia Post. Publication No. N262854



B Section 3918702 GACasta Com-646-9098

Rosemark

1171-455-6892

John F. Soth (206)

Bellgate Prunty - 451-9048

Commercial Relocation 911

Refinancing Styles

Rumors Hair

Uniform Telephone

Walter Union

2664542489

John Soth Inc. Church

454-7833

5414433

451-8951

455-1138

454-7833

462-1162

The quiet life of Michael Hand

IN the highly unlikely event that any of our law enforcement authorities should want to get in touch with Michael Hand, *The Eye* can report that he's quietly tucked away at Suite 327, 1075 Bellevue Way, NE Bellevue, Washington State.

Michael's even got back together with his wife Helen. Before moving to Washington State, they lived cosily in Arizona and Idaho. Not long ago Helen, reverting to the surname Davis, had her Australian passport renewed so she could travel to France. Even if the US authorities are not prepared to tell their trusted Aussie counterparts about Hand's location, the passport renewal should have done the job.

Not that anyone in Australian official circles seems to care about catching up with Hand, who left Australia on a false passport in June 1980. Hand, you might recall, was co-founder of the Nugan Hand Bank which collapsed after Frank Nugan was found dead of gunshot wounds in January 1980.

The collapse of Nugan Hand -- whose principals specialised in shifting mountains of black money around the globe -- was a pivotal event in the outbreak of corporate piracy that scarred Australia over the past decade. Millions of depositors' funds went missing in a bank that facilitated tax fraud, drug financing, and arms dealing and yet the law did stuff-all. The failure to nail those responsible within the Bank sent a clear signal to other corporate crooks who went on to bigger and better things as the 80s wore on.

After Nugan's death many documents were shredded and others removed from the head office in Sydney. One director has stated on oath that Hand warned executives, "If we didn't do what we were told, and things weren't handled properly, our wives would be cut into pieces and put in boxes and sent back to us". Even in the rough and tumble of the Australian banking world, it was the sort of threat that might be expected to earn more than a tut-tut from Australian authorities.

Millions were spent on a Royal Commission conducted by Justice



Donald Stewart who came up with almost nothing except a bagging for anyone who suggested Hand and other Americans associated with the Bank might have been well plugged in to US intelligence circles.

He even chose to ignore an interview given to Australian police by the CIA's most famous "dirty tricks" operative, Ted Shackley, who freely admitted that Hand had worked for him in the Agency in Indochina. Many of the key Nugan Hand figures were later revealed as deeply involved in the Irangate scandal involving the sale of arms to Iran to help finance Contra rebels in Nicaragua.

Despite the pathetic lack of results from his Nugan Hand investigations, Stewart must have made the right impression in the right quarters -- he was made the first head of the National Crime Authority. But his inability to see any Nugan Hand connections to US intelligence has taken another blow with the publication of a book called *Kiss the Boys Goodbye* on the fate of American POWs in Vietnam.

The book's co-authors are Monika Jensen-Stevenson, an Emmy-winning former producer with the American 60 Minutes program, and William Stevenson, author of *Ninety Minutes at Entebbe* and *A Man Called Intrepid*. Their book gives a sympathetic account of the claims, particularly prevalent in right-wing political circles, that the US abandoned many of

its own prisoners at the end of the Vietnam war.

They quote a former high ranking CIA official as telling them that Nugan Hand was known in insider parlance as Yin Han and had been the vehicle to finance a covert war in Indochina after the official war ended. "One purpose was to make big money for themselves," he said. "But there was always this gloss, this pretence of generating money to support anti-communist 'freedom fighters' wherever the US Congress won't vote them an adequate budget'."

A Washington DC detective, Jim Badet, told the authors about a "team of specialists in covert warfare, who after we left Saigon, assisted one another with government contracts drawn up in secrecy on the grounds of national security. Their names were associated with Nugan Hand and an ex-CIA official Ed Wilson who was jailed for selling explosives to Qaddafi."

The basic theme of the book is that semi-official intelligence operations to punish Vietnam for winning the war became entangled in various drug and arms deals that took precedence over attempts to free POWs.

The authors say that a retired Navy Captain, Rod McDaniel, who now runs a lobby group for a tough US military posture called the American Defence Institute, believes "the enemy of his missing comrades was now to be found in zealots backing the Khmer Rouge. Those zealots wanted nothing so much as to wipe out the humiliating defeats they had suffered at the hands of the Vietnamese, even if it meant backing the murderous Khmer Rouge. US defeats had been blamed on 'bleeding hearts' in Washington. The zealots had no intention of being defeated again because hearts bled for missing soldiers."

In case anyone, other than a Royal Commissioner, still finds it hard to accept that US covert operatives would have anything to do with the drug trade, the book quotes secret memos from the head of the US Southern Command in 1985, General Paul Gorman, saying, "There's not a single group in unconventional warfare that does not use narcotics to fund itself."

B Section 3918702 GACarter Com-646-9098
 Rosemark 206 1171-455-6892 John F. Soth (206) Bellgate Prunty - 451-9048
 324 264542489 John Soth Inc. Church Commercial Relocation 91-1138
 454-7833 5414433 451-8951 Ann Brown 454-7833 462-1162
 Medina Cleaners Rums Hair
 Nuskia Unifree Terpsen
 Western Union

The quiet life of Michael Hand

IN the highly unlikely event that any of our law enforcement authorities should want to get in touch with Michael Hand, *The Eye* can report that he's quietly tucked away at Suite 327, 1075 Bellevue Way, NE Bellevue, Washington State.

Michael's even got back together with his wife Helen. Before moving to Washington State, they lived cosily in Arizona and Idaho. Not long ago Helen, reverting to the surname Davis, had her Australian passport renewed so she could travel to France. Even if the US authorities are not prepared to tell their trusted Aussie counterparts about Hand's location, the passport renewal should have done the job.

Not that anyone in Australian official circles seems to care about catching up with Hand, who left Australia on a false passport in June 1980. Hand, you might recall, was co-founder of the Nugan Hand Bank which collapsed after Frank Nugan was found dead of gunshot wounds in January 1980.

The collapse of Nugan Hand -- whose principals specialised in shifting mountains of black money around the globe -- was a pivotal event in the outbreak of corporate piracy that scarred Australia over the past decade. Millions of depositors funds went



Donald Stewart who came up with almost nothing except a bagging for anyone who suggested Hand and other Americans associated with the Bank might have been well plugged in to US intelligence circles.

He even chose to ignore an interview given to Australian police by the CIA's most famous "dirty tricks" operative, Ted Shackley, who freely admitted that Hand had worked for him in the Agency in Indochina. Many of the key Nugan Hand figures were later revealed as deeply involved in

its own prisoners at the end of the Vietnam war.

They quote a former high ranking CIA official as telling them that Nugan Hand was known in insider parlance as Yin Han and had been the vehicle to finance a covert war in Indochina after the official war ended. "One purpose was to make big money for themselves," he said. "But there was always this gloss, this pretence of generating money to support anti-communist 'freedom fighters' wherever the US Congress won't vote them an adequate budget."

A Washington DC detective, Jim Badet, told the authors about a "team of specialists in covert warfare, who after we left Saigon, assisted one another with government contracts drawn up in secrecy on the grounds of national security. Their names were associated with Nugan Hand and an ex-CIA official Ed Wilson who was jailed for selling explosives to Qaddafi."

The basic theme of the book is that semi-official intelligence operations to punish Vietnam for winning the war became entangled in various drug and arms deals that took precedence over attempts to free POWs.

The authors say that a retired Navy Captain, Rod McDaniel, who now runs a lobby group for a tough US military

From Swiss Computer
 455 8614
 Mortgage Underw
 454 9600
 440-

1046 8003 462-1162

1075 S.E. 1646-8003

NUGAN HAND BANK

B Section 3918702 GA Carter Com-646-9098

Rosemark-

206

1171-455-6892

John F. Soth (206)

Bellgate Printery - 451-9048

Commercial Relocation & Mailboxes and More

Klipman Styles

Medina Cleaners

Rumors Hair

Nuskin

Uniform Tailoring

Walter Munn

264542489

John Soth Inc. Church

454-7833 5414433 451-8951

455-1138 Ann Brown

454-7833

462-1162

The quiet life of Michael Hand

IN the highly unlikely event that any of our law enforcement authorities should want to get in touch with Michael Hand, *The Eye* can report that he's quietly tucked away at Suite 327, 1075 Bellevue Way, NE Bellevue, Washington State.

Michael's even got back together with his wife Helen. Before moving to Washington State, they lived cosily in Arizona and Idaho. Not long ago Helen, reverting to the surname Davis, had her Australian passport renewed so she could travel to France. Even if the US authorities are not prepared to tell their trusted Aussie counterparts about Hand's location, the passport renewal should have



its own prisoners at the end of the Vietnam war.

They quote a former high ranking CIA official as telling them that Nugan Hand was known in insider parlance as Yin Han and had been the vehicle to finance a covert war in Indochina after the official war ended. "One purpose was to make big money for themselves," he said. "But there was always this gloss, this pretence of generating money to support anti-communist 'freedom fighters' wherever the US Congress won't vote them an adequate budget."

A Washington DC detective, Jim Badet, told the authors about a "team of specialists in covert warfare, who

Porn Slave Computer
455 8614 Mortgage Under
454 9600

946 8002 462-1162
1075 S.E. - 646-8003

Nugan's death many documents were shredded and others removed from the head office in Sydney. The director has stated on oath that armed executives, "If we didn't we were told, and things handled properly, our wives would be cut into pieces and put in the cut into pieces and put in the sent back to us". Even in the world, it was the sort of threat to be expected to earn more money out of Australian audiences.

They were spent on a Royal Commission conducted by Justice

was made the first head of the National Crime Authority. But his inability to see any Nugan Hand connections to US intelligence has taken another blow with the publication of a book called *Kiss the Boys Goodbye* on the fate of American POWs in Vietnam.

The book's co-authors are Monika Jensen-Stevenson, an Emmy-winning former producer with the American *60 Minutes* program, and William Stevenson, author of *Ninety Minutes at Entebbe* and *A Man Called Intrepid*. Their book gives a sympathetic account of the claims, particularly prevalent in right-wing political circles, that the US abandoned many of

ing defeats they had suffered at the hands of the Vietnamese, even if it meant hacking the murderous Khmer Rouge. US defeats had been blamed on 'bleeding hearts' in Washington. The zealots had no intention of being defeated again because hearts bled for missing soldiers."

In case anyone, other than a Royal Commissioner, still finds it hard to accept that US covert operatives would have anything to do with the drug trade, the book quotes secret memos from the head of the US Southern Command in 1985, General Paul Gorman, saying, "There's not a single group in unconventional warfare that does not use narcotics to fund itself."

E June Quarter 1991

206 649-9717 1075 Bellevue Way N.E.



DEPOSITIONS

MISC

MISC PUBLICATIONS

"Covert Action Info Bulletin"

"Unclassified"

Christie Institute

"TIME"

"NEWSPAPERS"

PUBLISHING

GOLDEN

JULY 1964

NATIONAL



DEVELOPMENT

DEVELOPMENT

Christie Institute - Graveyard

"Unclassified"

"TIME"

"DEVELOPMENT"

BIPOLAR I

THEY REPRESENT THE

ALL THE

PROBES OF THE

N.I.H. Program Advisory Docs

nmite

301. TECHNOLOGY DEVELOPMENT, MAPPING, AND DNA SEQUENCING IN SUPPORT OF THE HUMAN
302. GENOME PROGRAM

303.
304. P.T. 34; K.W. 1215018, 0755045, 1002058, 1004017, 1003012, 1002008, 0710030

305.
306. Office of Human Genome Research

307.
308. This Program Announcement restates the interest of the National Institutes of
309. Health (NIH) in receiving research grant applications for studies related to
310. the Human Genome Initiative. The present announcement supersedes the previous
311. NIH-wide Program Announcement (November 4, 1988) on mapping and determining
312. the DNA sequence of the genomes of the human or of model organisms. The
313. objective is to stimulate creative, innovative research that will
314. substantially improve the rapidity, efficiency and accuracy with which mapping
315. and DNA sequence data can be obtained, analyzed, and distributed.

316.
317.
318.

319. Vol. 18, No. 26, July 28, 1989 - Page 3

320.
321. BACKGROUND INFORMATION

322.
323. The NIH is currently engaged, along with several other federal, private, and
324. international organizations, in a research program known as the Human Genome
325. Initiative. This program is designed to characterize the human genome and the
326. genomes of selected model organisms. It has several interrelated goals: the
327. construction of high resolution genetic linkage maps; the development of a
328. variety of physical maps; the determination of the complete nucleotide
329. sequence of the DNA of selected organisms; the development of the capability
330. for collecting, storing, distributing, and analyzing the data and materials
331. produced; and the development of appropriate new technologies necessary to
332. achieve these objectives. The information that will be obtained within the
333. genome project will be a resource for studies of gene structure and function
334. and will promote research into the genetic aspects of human disease. In this
335. way, the Human Genome Initiative will serve as an underlying source of
336. information for, and stimulus to, a wide range of studies from the most basic
337. to targeted and clinical programs across the spectrum of NIH interests and
338. responsibilities.

339.
340. In the past two years, several announcements/solicitations for grant
341. applications related to the Human Genome Initiative have been published in the
342. NIH Guide for Grants and Contracts. These include two broad Program
343. Announcements and several Requests for Applications. This Program
344. Announcement consolidates the prior announcements/solicitations in one
345. document and emphasizes the continuing, ongoing interest on the part of the
346. NIH in receiving grant applications for support of research projects that
347. address the goals of the genome program with a wide range of research
348. activities. One area in which research activities are encouraged is the
349. development of improved technology for physical mapping, for the determination
350. of DNA sequences, and for the management of the information that accrues. A
351. separate, but equally important, area includes research projects that seek to
352. increase the information available about specific genomic regions through the
353. expansion of genetic maps, the construction of physical maps, or pilot
354. projects for large-scale DNA sequence determination.

355.
356. Creative, novel approaches in all these areas will be essential to the success
357. of the genome project. To this end, the NIH encourages interdisciplinary
358. programs that draw from fields such as information science, chemistry,
359. physics, and engineering, in addition to the biological sciences.

From NIH Guide to
Grants & Contracts

Vol 18, No 26

July 28, 89

FGIGR/NI-07

(In October ~~Supp~~ folder
when IRE received it)

TECHNOLOGY DEVELOPMENT, MAPPING, AND DNA SEQUENCING IN SUPPORT OF THE HUMAN
GENOME PROGRAM

P.T. 34; K.W. 1215018, 0755045, 1002058, 1004017, 1003012, 1002008, 0710030

Office of Human Genome Research

This Program Announcement restates the interest of the National Institutes of Health (NIH) in receiving research grant applications for studies related to the Human Genome Initiative. The present announcement supersedes the previous NIH-wide Program Announcement (November 4, 1988) on mapping and determining the DNA sequence of the genomes of the human or of model organisms. The objective is to stimulate creative, innovative research that will substantially improve the rapidity, efficiency and accuracy with which mapping and DNA sequence data can be obtained, analyzed, and distributed.

FIGR/NI-07

Vol. 18, No. 26, July 28, 1989 - Page 3

BACKGROUND INFORMATION

The NIH is currently engaged, along with several other federal, private, and international organizations, in a research program known as the Human Genome Initiative. This program is designed to characterize the human genome and the genomes of selected model organisms. It has several interrelated goals: the construction of high resolution genetic linkage maps; the development of a variety of physical maps; the determination of the complete nucleotide sequence of the DNA of selected organisms; the development of the capability for collecting, storing, distributing, and analyzing the data and materials produced; and the development of appropriate new technologies necessary to achieve these objectives. The information that will be obtained within the genome project will be a resource for studies of gene structure and function and will promote research into the genetic aspects of human disease. In this way, the Human Genome Initiative will serve as an underlying source of information for, and stimulus to, a wide range of studies from the most basic to targeted and clinical programs across the spectrum of NIH interests and responsibilities.

In the past two years, several announcements/solicitations for grant applications related to the Human Genome Initiative have been published in the NIH Guide for Grants and Contracts. These include two broad Program Announcements and several Requests for Applications. This Program Announcement consolidates the prior announcements/solicitations in one document and emphasizes the continuing, ongoing interest on the part of the NIH in receiving grant applications for support of research projects that address the goals of the genome program with a wide range of research activities. One area in which research activities are encouraged is the development of improved technology for physical mapping, for the determination of DNA sequences, and for the management of the information that accrues. A separate, but equally important, area includes research projects that seek to increase the information available about specific genomic regions through the expansion of genetic maps, the construction of physical maps, or pilot projects for large-scale DNA sequence determination.

Creative, novel approaches in all these areas will be essential to the success of the genome project. To this end, the NIH encourages interdisciplinary programs that draw from fields such as information science, chemistry, physics, and engineering, in addition to the biological sciences.

Progress will be accelerated by cooperation and interaction among investigators. Therefore, it is expected that all materials and information derived from this work will be made available to the scientific community in a timely manner, in accord with Public Health Service policy. Within the genome program, awardees will be expected to share information and to work closely with other laboratories involved in related projects.

RESEARCH SCOPE

This Program Announcement is intended to emphasize the ongoing commitment of the NIH to the specific goals of the genome project and to the development of methodological tools and resources which would support this effort, including the storage and retrieval of materials and data. Applications responsive to this announcement will include a broad spectrum of research approaches to genetic and physical mapping, DNA sequencing, data handling and new methods of data interpretation. Development of new and imaginative technologies needed to support the genome project is encouraged.

TECHNOLOGY DEVELOPMENT, MAPPING, AND DNA SEQUENCING IN SUPPORT OF THE HUMAN
GENOME PROGRAM

P.T. 34; K.W. 1215018, 0755045, 1002058, 1004017, 1003012, 1002008, 0710030

Office of Human Genome Research

This Program Announcement restates the interest of the National Institutes of Health (NIH) in receiving research grant applications for studies related to the Human Genome Initiative. The present announcement supersedes the previous NIH-wide Program Announcement (November 4, 1988) on mapping and determining the DNA sequence of the genomes of the human or of model organisms. The objective is to stimulate creative, innovative research that will substantially improve the rapidity, efficiency and accuracy with which mapping and DNA sequence data can be obtained, analyzed, and distributed.

Vol. 18, No. 26, July 28, 1989 - Page 3

BACKGROUND INFORMATION

The NIH is currently engaged, along with several other federal, private, and international organizations, in a research program known as the Human Genome Initiative. This program is designed to characterize the human genome and the genomes of selected model organisms. It has several interrelated goals: the construction of high resolution genetic linkage maps; the development of a variety of physical maps; the determination of the complete nucleotide sequence of the DNA of selected organisms; the development of the capability for collecting, storing, distributing, and analyzing the data and materials produced; and the development of appropriate new technologies necessary to achieve these objectives. The information that will be obtained within the genome project will be a resource for studies of gene structure and function and will promote research into the genetic aspects of human disease. In this way, the Human Genome Initiative will serve as an underlying source of information for, and stimulus to, a wide range of studies from basic to targeted and clinical programs across the spectrum of NIH responsibilities.

In the past two years, several announcements/solicitations for grant applications related to the Human Genome Initiative have been published in the NIH Guide for Grants and Contracts. These include two broad Program Announcements and several Requests for Applications. This Program Announcement consolidates the prior announcements/solicitations in one document and emphasizes the continuing, ongoing interest on the part of the NIH in receiving grant applications for support of research projects that address the goals of the genome program with a wide range of research activities. One area in which research activities are encouraged is the development of improved technology for physical mapping, for the determination of DNA sequences, and for the management of the information that accrues. A separate, but equally important, area includes research projects that seek to increase the information available about specific genomic regions through the expansion of genetic maps, the construction of physical maps, or pilot projects for large-scale DNA sequence determination.

Creative, novel approaches in all these areas will be essential to the success of the genome project. To this end, the NIH encourages interdisciplinary programs that draw from fields such as information science, chemistry, physics, and engineering, in addition to the biological sciences.

Progress will be accelerated by cooperation and interaction among investigators. Therefore, it is expected that all materials and information derived from this work will be made available to the scientific community in a timely manner, in accord with Public Health Service policy. Within the genome program, awardees will be expected to share information and to work closely with other laboratories involved in related projects.

RESEARCH SCOPE

This Program Announcement is intended to emphasize the ongoing commitment of the NIH to the specific goals of the genome project and to the development of methodological tools and resources which would support this effort, including the storage and retrieval of materials and data. Applications responsive to this announcement will be accepted on a continuing basis.

From NIH
Grant
Vol

FIGR/WI-07

(In October
when I

353. expansion of genetic maps, the construction of physical maps, or pilot
354. projects for large-scale DNA sequence determination.
355.
356. Creative, novel approaches in all these areas will be essential to the success
357. of the genome project. To this end, the NIH encourages interdisciplinary
358. programs that draw from fields such as information science, chemistry,
359. physics, and engineering, in addition to the biological sciences.
360.

361. Progress will be accelerated by cooperation and interaction among
362. investigators. Therefore, it is expected that all materials and information
363. derived from this work will be made available to the scientific community in a
364. timely manner, in accord with Public Health Service policy. Within the genome
365. program, awardees will be expected to share information and to work closely
366. with other laboratories involved in related projects.
367.

368. RESEARCH SCOPE

369.
370. This Program Announcement is intended to emphasize the ongoing commitment of
371. the NIH to the specific goals of the genome project and to the development of
372. methodological tools and resources which would support this effort, including
373. the storage and retrieval of materials and data. Applications responsive to
374. this announcement will include a broad spectrum of research approaches to
375. genetic and physical mapping, DNA sequencing, data handling and new methods of
376. data interpretation. Development of new and imaginative technologies needed
377. to support the genome project are especially encouraged. The topics described
378. below are not intended to limit the types of applications that are acceptable
379. in response to this announcement, but rather to illustrate the range of work
380. that will be needed to attain the goals of the genome project.
381.

382. However, research directed toward analysis of the biological function of
383. specific genes or gene systems, or the application of genetic information to
384. the understanding, diagnosis, prevention, or treatment of specific genetic
385. disorders is not within the scope of the genome program. Such work is
386. currently supported by a number of other programs at the NIH. Information
387. about these programs can be obtained from individual Institutes. Potential
388. applicants are encouraged to contact one of the representatives listed below
389. to discuss the proposed research project and for additional information.
390.

391. Technology Development

392.
393. The objective is to stimulate creative, innovative research that will lead to
394. substantial improvements in the speed, efficiency and accuracy with which
395. mapping and DNA sequence data can be obtained, analyzed, and distributed.
396. Such improvements can be achieved through automation of existing methodology,
397. development of new approaches, or both. Multi-disciplinary approaches to the
398.
399.

400. Vol. 18, No. 26, July 28, 1989 - Page 4
401. attainment of these goals are encouraged. Examples of the problems for which
402. improved technological solutions and/or automation are needed are:
403.

- 404. o generating, purifying, and cloning large DNA fragments;
- 405.
- 406. o constructing physical maps, including long-range restriction maps
- 407. and overlapping sets (contigs) of DNA fragments that are derived
- 408. from specific chromosomal regions and are connected into more
- 409. extensive physical arrays;
- 410.
- 411. o determining relationships between genetic and physical maps;
- 412.
- 413. o locating specific genes on genetic and physical maps and within
- 414. regions of sequenced DNA;
- 415.
- 416. o determining DNA sequence, including assembling overlapping DNA
- 417. sequences into longer arrays;
- 418.
- 419. o storing, analyzing, and distributing the data obtained in each of
- 420. these activities; and

- 421.
- 422. o storing, and distributing the materials generated by any of these
- 423. activities.

NIH in receiving grant applications for support of research
address the goals of the genome program with a wide range of research
activities. One area in which research activities are encouraged is the
development of improved technology for physical mapping, for the determination
of DNA sequences, and for the management of the information that accrues. A
separate, but equally important, area includes research projects that seek to
increase the information available about specific genomic regions through the
expansion of genetic maps, the construction of physical maps, or pilot
projects for large-scale DNA sequence determination.

Creative, novel approaches in all these areas will be essential to the success
of the genome project. To this end, the NIH encourages interdisciplinary
programs that draw from fields such as information science, chemistry,
physics, and engineering, in addition to the biological sciences.

Progress will be accelerated by cooperation and interaction among
investigators. Therefore, it is expected that all materials and information
derived from this work will be made available to the scientific community in a
timely manner, in accord with Public Health Service policy. Within the genome
program, awardees will be expected to share information and to work closely
with other laboratories involved in related projects.

RESEARCH SCOPE

This Program Announcement is intended to emphasize the ongoing commitment of
the NIH to the specific goals of the genome project and to the development of
methodological tools and resources which would support this effort, including
the storage and retrieval of materials and data. Applications responsive to
this announcement will include a broad spectrum of research approaches to
genetic and physical mapping, DNA sequencing, data handling and new methods of
data interpretation. Development of new and imaginative technologies needed
to support the genome project are especially encouraged. The topics described
below are not intended to limit the types of applications that are acceptable
in response to this announcement, but rather to illustrate the range of work
that will be needed to attain the goals of the genome project.

However, research directed toward analysis of the biological function of
specific genes or gene systems, or the application of genetic information to
the understanding, diagnosis, prevention, or treatment of specific genetic
disorders is not within the scope of the genome program. Such work is
currently supported by a number of other programs at the NIH. Information
about these programs can be obtained from individual Institutes. Potential
applicants are encouraged to contact one of the representatives listed below
to discuss the proposed research project and for additional information.

Technology Development

The objective is to stimulate creative, innovative research that will lead to
substantial improvements in the speed, efficiency and accuracy with which
mapping and DNA sequence data can be obtained, analyzed, and distributed.
Such improvements can be achieved through automation of existing methodology,
development of new approaches, or both. Multi-disciplinary approaches to the

Vol. 18, No. 26, July 28, 1989 - Page 4

attainment of these goals are encouraged. Examples of the problems for which
improved technological solutions and/or automation are needed are:

- o generating, purifying, and cloning large DNA fragments;
- o constructing physical maps, including long-range restriction maps
and overlapping sets (contigs) of DNA fragments that are derived
from specific chromosomal regions and are connected into more
extensive physical arrays;
- o determining relationships between genetic and physical maps;
- o locating specific genes on genetic and physical maps and within
regions of sequenced DNA;
- o determining DNA sequence, including assembling overlapping DNA
sequences into longer arrays;
- o storing, analyzing, and distributing the data obtained in each of
these activities; and

- o storing and distributing the materials generated by all of these
activities.

Applicants are advised to take several general considerations into account
when designing new projects.

- o methodological improvements have played an important role in the
advancing biological research, particularly in the area of DNA sequencing.

418. storing, analyzing, and distributing the data obtained in each of
419. these activities; and
420.

421.
422. o storing and distributing the materials generated by all of these
423. activities.
424.

425. Applicants are advised to take several general considerations into account
426. when designing new projects.
427.

428. o Methodological improvements have played an important role in
429. advancing biological research, never more so than in the past
430. twenty years. In general, when technology development has been
431. successful, it has been driven by the desire to solve specific
432. scientific problems. Therefore, it is reasonable to expect that,
433. within the context of the genome program also, the most successful
434. new technologies will come from those endeavors in which the
435. attempt to develop better technology occurs in the context of a
436. specific research problem related to genomic analysis. Applicants
437. are encouraged to clearly define the biological problem for which
438. the technological solution is being devised. Applicants whose
439. expertise is primarily non-biological and who are interested in
440. addressing problems of genome analysis with new, non-biological
441. tools are especially encouraged to interact closely with
442. biologists.
443.

444. o It has been suggested that to significantly increase the rate at
445. which mapping and sequence data can be acquired, efforts should be
446. directed toward improving by three- to five-fold the scale and/or
447. efficiency with which particular steps in mapping, sequence
448. determination, or data analysis can be accomplished. Such an
449. incremental increase can serve as a useful benchmark in designing a
450. research program.
451.

452. o Achievement of such a significant improvement in analytical
453. capability may require entirely new approaches. Methods that have
454. been useful for addressing particular needs in the past, such as
455. determining the sequence of a few kilobases of DNA, may not be
456. adequate for addressing comparable problems on a much larger scale.
457. The NIH recognizes that novel approaches may involve a considerable
458. degree of risk and encourages submission of high-risk, high pay-off
459. projects in response to this announcement.
460.

461. Mapping and DNA Sequencing 462.

463. The objective is to increase our knowledge of the genetic and physical maps
464. and the DNA sequence of selected organisms, leading up to the complete maps of
465. the human genome and the complete human DNA sequence. Research projects in
466. the following areas are encouraged:
467.

468. o expanding the genetic map of the human, or of those model organisms
469. for which such information would serve to promote the objectives of
470. the overall genome program;
471.
472. o constructing physical maps of the chromosomes of the human and of
473. model organisms, including projects for large-scale physical
474. mapping; and
475.
476. o pilot projects for large-scale DNA sequence determination,
477. involving the DNA of model organisms or regions of the human
478. genome.
479.
480.

345. document and emphasizes the continuing support of research that
346. NIH in receiving grant applications for support of research that
347. address the goals of the genome program with a wide range of research
348. activities. One area in which research activities are encouraged is the
349. development of improved technology for physical mapping, for the determination
350. of DNA sequences, and for the management of the information that accrues. A
351. separate, but equally important, area includes research projects that seek to
352. increase the information available about specific genomic regions through the
353. expansion of genetic maps, the construction of physical maps, or pilot
354. projects for large-scale DNA sequence determination.
355. Creative, novel approaches in all these areas will be essential to the success
356. of the genome project. To this end, the NIH encourages interdisciplinary
357. programs that draw from fields such as information science, chemistry,
358. physics, and engineering, in addition to the biological sciences.
359.
360.

481. The primary goal of research projects proposed under this section will be the
482. generation of a substantial amount of new mapping and/or sequence information.
483. The project may utilize current technology or propose new or improved
484. technology. If current technology is used, it should be used at or near its
485. limits in order to explore its capabilities.
486.

487. Because of the extensive amount of information already available about the
488. genetics and molecular biology of *E. coli*, *S. cerevisiae*, *D. melanogaster*, *C.*
489. *elegans*, and *M. musculus*, the genome program is particularly interested in
490. promoting study of these models. However, research projects that involve
491. other models are also expected to make important contributions to the Human
492. Genome Initiative by means of both development of new technology and improved
493. understanding of genome structure through comparative studies. Thus, no model
494. organism is excluded from the genome program a priori. However, applicants
495. proposing to study models other than those named above must provide a
496. rationale, in terms of the goals of the overall genome program, for the use of
497. such another model.
498.

499. MECHANISMS OF SUPPORT

500.
501. Support for this program will be through research grants, including project
502. grants (R01), program project grants (P01), FIRST awards (R29), resources
503. related research projects and biotechnology resource grants (R24, P41),
504. Research Career Development Awards (K04), conference grants (R13) and Small
505. Business Innovation Research (SBIR) grants (R43, R44). Because not all
506. institutes support all of the above mechanisms, potential applicants are
507. encouraged to contact the representatives listed below for additional
508. information. Policies that govern research grant programs of the NIH apply to
509. this program. Consortium arrangements and collaborative projects among
510. scientists with skills in biological sciences, chemistry, physics, information
511. science, and engineering are encouraged.
512.

513. APPLICATION AND REVIEW PROCEDURES

514.
515. Applications in response to this announcement will be reviewed in accordance
516. with the usual NIH peer review procedures. They will first be reviewed for
517. scientific and technical merit by a special study section in the Division of
518. Research Grants organized for this purpose. Following the initial review, the
519. applications will be considered by the appropriate National Advisory Board or
520. Council. Review criteria that will be used to assess the scientific merit of
521. an application are the following:
522.

- 523. o Scientific merit;
- 524.
- 525. o Potential value of the research for furthering the goals of the
- 526. genome project;
- 527.
- 528. o Feasibility of the research and adequacy of the experimental
- 529. design;
- 530.
- 531. o Significance and originality of the research and methodological
- 532. approaches, as they relate to the genome project;
- 533.
- 534. o Training, experience, research competence, and dedication of the
- 535. investigator(s);
- 536.
- 537. o Adequacy of available facilities;
- 538.
- 539. o Provisions for the protection of human subjects, the humane care of
- 540. animals, and biosafety conditions;

- 541.
- 542.
- 543. o Appropriateness of the requested budget for the work proposed.
- 544.

545. Because the significance of the proposed research project to the goals of the
546. Human Genome Initiative is a criterion for review, consultants must consider
547. this aspect in the evaluation of an application submitted to this
548. Program Announcement. Applicants are, therefore, urged to consider
549. one of the staff listed below before submitting an application to this
550. proposed application to the

481. The primary goal of research projects proposed under this section will be the
482. generation of a substantial amount of new mapping and/or sequence information.
483. The project may utilize current technology or propose new or improved
484. technology. If current technology is used, it should be used at or near its
485. limits in order to explore its capabilities.

486.
487. Because of the extensive amount of information already available about the
488. genetics and molecular biology of *E. coli*, *S. cerevisiae*, *D. melanogaster*, *C.*
489. *elegans*, and *M. musculus*, the genome program is particularly interested in
490. promoting study of these models. However, research projects that involve
491. other models are also expected to make important contributions to the Human
492. Genome Initiative by means of both development of new technology and improved
493. understanding of genome structure through comparative studies. Thus, no model
494. organism is excluded from the genome program a priori. However, applicants
495. proposing to study models other than those named above must provide a
496. rationale, in terms of the goals of the overall genome program, for the use of
497. such another model.
498.

499. MECHANISMS OF SUPPORT

500.
501. Support for this program will be through research grants, including project
502. grants (R01), program project grants (P01), FIRST awards (R29), resources
503. related research projects and biotechnology resource grants (R24, P41),
504. Research Career Development Awards (K04), conference grants (R13) and Small
505. Business Innovation Research (SBIR) grants (R43, R44). Because not all
506. institutes support all of the above mechanisms, potential applicants are
507. encouraged to contact the representatives listed below for additional
508. information. Policies that govern research grant programs of the NIH apply to
509. this program. Consortium arrangements and collaborative projects among
510. scientists with skills in biological sciences, chemistry, physics, information
511. science, and engineering are encouraged.
512.

513. APPLICATION AND REVIEW PROCEDURES

514.
515. Applications in response to this announcement will be reviewed in accordance
516. with the usual NIH peer review procedures. They will first be reviewed for
517. scientific and technical merit by a special study section in the Division of
518. Research Grants organized for this purpose. Following the initial review, the
519. applications will be considered by the appropriate National Advisory Board or
520. Council. Review criteria that will be used to assess the scientific merit of
521. an application are the following:
522.

- 523. o Scientific merit;
- 524.
- 525. o Potential value of the research for furthering the goals of the
- 526. genome project;
- 527.
- 528. o Feasibility of the research and adequacy of the experimental
- 529. design;
- 530.
- 531. o Significance and originality of the research and methodological
- 532. approaches, as they relate to the genome project;
- 533.
- 534. o Training, experience, research competence, and dedication of the
- 535. investigator(s);
- 536.
- 537. o Adequacy of available facilities;
- 538.
- 539. o Provisions for the protection of human subjects, the humane care of
- 540. animals, and biosafety conditions;

- 533. o Training, experience, research competence, and dedication of the investigator(s);
- 534. o Adequacy of available facilities;
- 535. o Provisions for the protection of human subjects, the humane care of animals, and biosafety conditions;
- 536.
- 537.
- 538.
- 539.
- 540.

- 541. o Appropriateness of the requested budget for the work proposed.
- 542.
- 543.

Because the significance of the proposed research project to the goals of the Human Genome Initiative is a criterion for review, consultants must consider this aspect in the evaluation of an application submitted in response to this Program Announcement. Applicants are, therefore, encouraged to consult with one of the staff listed below before submission, to discuss the relevance of a proposed application to the genome program.

METHOD OF APPLYING

Applications should be submitted on Form PHS 398 (rev. 10/88). Application kits are available in most institutional business offices and from the Office of Grants Inquiries, Division of Research Grants, Westwood Building, Room 449, National Institutes of Health, Bethesda, Maryland 20892; telephone (301) 496-7441.

Vol. 18, No. 26, July 28, 1989 - Page 6

Applications will be accepted in accordance with the usual NIH receipt dates that apply for the various mechanisms listed under MECHANISMS OF SUPPORT. It is essential that applicants type "Technology Development, Mapping, and DNA Sequence Determination in Support of the Human Genome Initiative" in item 2 on the face page of the application form. The original and six copies of the application should be submitted to the following office:

Application Receipt Office
Division of Research Grants
Westwood Building, Room 240
National Institutes of Health
Bethesda, Maryland 20892**
Telephone: (301) 496-7273

The conventional presentation for grant applications should be utilized.

Funding decisions will be based on recommendations of the initial review group and of the National Advisory Council regarding scientific merit and program relevance, as well as on the availability of funds.

INQUIRES

It is strongly recommended, but not required, that potential applicants contact the Office of Human Genome Research (OHGR) or the staff member at the appropriate NIH institute to discuss research objectives.

BID	CONTACT	BUILDING	ROOM	TELEPHONE
589.	OHGR Bettie Graham, Ph.D.	Shannon	201	496-0844
590.	NIDDK Robert Katz, Ph.D.	Westwood	607	496-7997
591.	NCI Cheryl Marks, Ph.D.	Executive	630	496-7028
592.		Plaza South		
593.	FIC Lynn Amende, Ph.D.	38A	613	496-6688
594.	DAR Charles Coulter, Ph.D.	Westwood	8A11	496-5411
595.	NIA Huber R. Warner, Ph.D.	31	5B39	496-6402
596.	NICHD Delbert Dayton, M.D.	Executive	5C19	496-5541
597.		Plaza North		
598.	WINDS N.C. Myrianthopoulos, Ph.D.	Federal	8C04	496-5821
599.	NLM Arthur Broering, Ph.D.	38A	8C16	496-4621
600.	NIDR John Townsley, Ph.D.	Westwood	506	496-7807

601.	NIGMS	Irene Eckstrand, Ph.D.	Westwood	920	496-7137
602.	NIAMS	Steven Hausman, Ph.D.	Westwood	403	496-7495
603.	NHLBI	Carol Letendre, Ph.D.	Federal	506	496-6402
604.	NIAID	William Duncan, Ph.D.	Westwood	754	496-5598
605.	NEI	Jack McLaughlin, Ph.D.	31	6A08	496-9110

606.
607. Mailing address for the above offices: Bethesda, Maryland 20892
608. All Bethesda telephone numbers are in area code 301.
609.

610.
611. **THE MAILING ADDRESS GIVEN FOR SENDING APPLICATIONS TO THE DIVISION OF
612. RESEARCH GRANTS OR CONTACTING PROGRAM STAFF IN THE WESTWOOD BUILDING IS THE
613. CENTRAL MAILING ADDRESS FOR THE NATIONAL INSTITUTES OF HEALTH. APPLICANTS WHO
614. USE EXPRESS MAIL OR A COURIER SERVICE ARE ADVISED TO FOLLOW THE CARRIER'S
615. REQUIREMENTS FOR SHOWING A STREET ADDRESS. THE ADDRESS FOR THE WESTWOOD
616. BUILDING IS:

617.
618. 5333 Westbard Avenue
619. Bethesda, Maryland 20816
620.
621.
622.
623.
624.
625.
626.
627.
628.
629.
630.
631.
632.
633.
634.
635.
636.
637.
638.
639.
640.

641. Vol. 18, No. 26, July 28, 1989 - Page 7
642. ** FULL TEXT OF RFAS FOR ONLINE ACCESS **
643.

644. REQUEST FOR COOPERATIVE AGREEMENT APPLICATIONS:
645. RFA-NIH-NIAID-89-AI-19
646.

647. Re-issuance of RFA 87-AI-24 dated September 25, 1987
648.

649. NATIONAL COOPERATIVE DRUG DISCOVERY GROUPS FOR THE TREATMENT
650. OF ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)
651.

652. P.T. 34; K.W. 0715008, 0740020, 0710100, 1003006, 1003002, 1002045, 0710070
653.

654. NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES
655.

656. Letter of Intent Date: October 2, 1989
657. Application Receipt Date: December 8, 1989
658.

659. The National Institute of Allergy and Infectious Diseases
660. (NIAID) invites applications for the establishment of